161 U.S. 359

161—359

CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~886~~. 810

LUTHER R. GRAVES, D. B. WESSON, SOCIETY FOR SAVINGS, AND WILLIAM BURGOYNE, APPELLANTS,

vs.

COUNTY OF SALINE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED JANUARY 14, 1895.

(15,770.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 886.

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vs.

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INDEX.

	Original.	Print.
Certificate to Supreme Court	1	1
Statement of facts	1	1
Form of bond	6	4
Endorsement on bond	7	5
Questions certified	8	6
Clerk's certificate	9	6

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 24, 1895.

1 In the United States Circuit Court of Appeals for the Seventh Judicial Circuit, October Term, 1894.

FRIDAY, *December* 14, 1894.

Present: William A. Woods, James G. Jenkins, circuit judges; Romanzo Bunn, district judge.

Certificate to the Supreme Court.

LUTHER L. GRAVES, D. B. WESSON, SOCIETY FOR SAVINGS, and WILLIAM BURGOYNE, Appellants,
vs.
COUNTY OF SALINE.

This cause came on for hearing upon appeal from the circuit court of the United States for the southern district of Illinois, and having been submitted for decision, certain questions and propositions of law amongst others are found to be involved in the appeal; concerning which questions and propositions the instruction of the Supreme Court of the United States is desired.

Now, therefore, on this 14th day of December, 1894, it is ordered that the accompanying statement of facts, and the following questions be certified to the Supreme Court of the United States for its opinion and instructions, to wit:

Statement of Facts.

The appellants were prior to the year 1883, *bona fide* holders for value and before maturity, of certain bonds issued by the county of Saline to the Belleville & Eldorado Railroad Company and to the St. Louis and Southeastern Railway Company respectively.

2 These bonds ($75,000 in amount to the former and $25,000 in amount to the latter company and bearing interest at the rate of eight per centum per annum payable semi-annually) were issued under authority of acts of the General Assembly of the State of Illinois, passed in the years 1861 (Pr. Laws of Illinois, 1861, p. 485) and 1869 (Pr. Laws of Illinois 1869, vol. 3, p. 238) and pursuant to an election duly ordered and held according to law on the 9th day of October, 1869, and in payment of subscriptions to stock in said companies respectively, dated January 15th, 1870, duly authorized by said election, upon certain conditions, one of which was that said railroad should be commenced within one year and completed within three years from the date of subscription, and another of the conditions was that the St. Louis and Southeastern railway should pass and a depot be established within one-half mile of the old court-house in Raleigh and within one-half mile of the church in Galatia.

These bonds to the St. Louis & Southeastern Railway Company were dated January 1, 1872, payable twenty years after date, with option of paying five years after date, and were issued and de-

livered to that company February 1st, 1872, and were purchased in open market by the appellants and for value and without notice, prior to the year 1876. The railroad was never constructed within one-half mile of the old court-house in Raleigh, or within one-half mile of the church in Galatia, but was constructed in a different direction, and the said condition was in no sense complied with, but was waived by the board of commissioners of said county after July 2nd, 1870.

The time for the completion of the Belleville & Eldorado railroad was by the board of commissioners of the county of Saline after July 2nd, 1870, extended from time to time and until October 20th, 1877, and the bonds were issued and delivered on the 19th day of April, 1877, being dated March 9, 1877, and payable twenty years after the 1st day of January, 1873, with option of paying five years after date.

The amendment to the constitution of the State of Illinois, which went into effect July 2nd, 1870, provided "no county, city, town, township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donations to or loan its credit in aid of such corporation; provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption."

3 The bonds issued to the St. Louis & Southeastern Railway Company were valid obligations of the county in the hands of the appellants under the decisions of the Supreme Court in the cases of Insurance Company *v.* Bruce, 105 U. S., 328, and Oregon *v.* Jennings, 119 U. S., 74.

The bonds issued to the Belleville & Eldorado Railroad Company were void even in the hands of *bona fide* purchasers for value, within the decision of German Savings Bank *v.* Franklin County, 128 U. S., 526.

The bonds to the St. Louis and Southeastern Railway Company were issued before and those to the Belleville & Eldorado Railroad Company were issued after the decision of the supreme court of Illinois, in the case of the Town of Eagle *v.* Kohn, 84 Ill., 292, decided in 1876.

The validity of none of these bonds was at any time questioned by the county of Saline until December 30th, 1889, and the county had annually paid the interest on all of these bonds from the time of their issue until they were exchanged for funding bonds of the county as hereinafter stated.

The county of Saline has always retained and now has the stock in said railway companies obtained by it for the bonds so issued to said railway companies respectively; but such stock is now and always has been wholly worthless and of no value.

The General Assembly of the State of Illinois, by act approved February 13th, 1865, and by acts amendatory thereto approved April 27th, 1877, and June 4th, 1879, enacted as follows (R. S. Illi-

nois, Cothran's annotated ed. 1881, p. 1119, 2 Star & Curtis' Stats., ch. 113, p. 1877):

SEC. 1. That in all cases where any county, city, town, township, school district, or other municipal corporation, has issued bonds or other evidences of indebtedness for money, or has contracted debts, which are the binding, subsisting legal obligations of such county, city, town, township, school district or other municipal corporation, and the same, or any portion thereof, remain outstanding and unpaid, it shall be lawful for the proper corporate authorities of any such county, city, town, township, school district or other municipal corporation, upon the surrender of any such bonds or other evidences of indebtedness, or any number or portion thereof, to issue, in lieu or place thereof, to the owners or holders of the same, new bonds prepared as hereinafter directed, and for such amounts, upon such time, not exceeding twenty years,
4 payable at such place, and bearing such rate of interest, not exceeding seven per centum per annum, as may be agreed upon with the owners or holders of such outstanding bonds or other evidences of indebtedness: Provided, That bonds issued under this act, to mature within five years from their date, may bear interest not to exceed eight per cent. per annum. And it shall also be lawful for the proper corporate authorities of any such county, city, town, township, school district, or other municipal corporation, to cause to be thus issued such new bonds, and sell the same, to raise money to purchase or retire any or all of such outstanding bonds or other evidences of indebtedness; the proceeds of the sales of such new bonds to be expended, under the direction of the corporate authorities aforesaid, in the purchase or retiring of the outstanding bonds or other evidences of indebtedness of such county, city, town, township, school district or other municipal corporation, and for no other purpose whatever. All bonds, or other evidences of indebtedness, issued under the provisions of this act, shall show upon their face that they are issued under this act, and the purpose for which they are issued, and shall be of uniform design and style throughout the State, to be prescribed by the State auditor, whose imperative duty it shall be to devise and prepare such uniform style and draft adapted to the classes of bonds herein provided for, namely: the first class to consist of bonds of which only the interest is payable annually; the second class to consist of those of which the interest and five per centum of the principal are to be paid annually, and the third class to consist of a graduated series, the first grade made payable, principal and interest, at the end of one year from the date of issue; the second at the end of two years, and thus to the end of the series, the class to be issued being at the option of the legal voters expressed as herein provided. In any case, the new bonds, or other evidences of indebtedness, authorized to be issued by this act, shall not be for a greater sum in the aggregate, than the principal and accrued or earned interest unpaid of such outstanding bonds or other evidences of indebtedness. And when such new bonds, or other evidences of indebtedness, shall have been issued, in order to be placed on the market and sold to ob-

tain proceeds with which to retire outstanding bonds, or other evidences of indebtedness, it shall be the duty of the State auditor, on the request of the corporate authorities issuing them, and at the expense of the corporation in whose behalf the issue is thus made, to negotiate the same, at not less than par value, and on the best terms which can be obtained: Provided, always, that any such county, city, town, township, school district or other municipal corporation issuing bonds under the provisions of this act, may, through its corporate authorities duly authorized, negotiate, sell or dispose of said bonds, or any part thereof, at not less than their par value, without the intervention of the auditor of State: And, provided, further, that no new bonds or other evidences of indebtedness shall be issued under this act, unless the same shall be first authorized, as hereinafter provided by a vote of a majority of the legal voters of such county, city, town, township, school district, or other municipal corporation voting at some general election, or special election held for that purpose.

Under and by virtue of this provision of law the board of commissioners of the county of Saline duly ordered an election to determine the question of issuing the bonds of the county for the purpose of paying and redeeming the bonds above stated issued to the St. Louis & Southeastern Railway Company and to the Belleville & Eldorado Railroad Company and to another railway company respectively, and at such election duly held according to law on the 6th day of November, 1883, a majority of the legal voters of the county of Saline voting at such election voted in favor of such proposition. On the 15th day of November, 1883, the board of commissioners of the county, by order duly made and entered, ordered in compliance with such vote that one hundred and ninety-five bonds of said county, of $1,000.00 each, be issued to take up and pay off the said bonds so issued to the St. Louis and Southeastern Railway Company, the Belleville & Eldorado Railroad Company and said other company; and the duly constituted officers of said county thereafter, on the 1st day of July, 1885, issued the bonds of said county in strict conformity with said act, to the amount in the aggregate of $100,000, to take up and pay off the said bonds so issued to the St. Louis and Southeastern Railway Company and to the Belleville & Eldorado Railroad Company; each of said bonds being of the tenor and effect following:

6 "UNITED STATES OF AMERICA. $1,000.

State of Illinois, County of Saline, Funding Bond, Issued under the Act of 1865, *as Amended April 27th,* 1877, *and June 4th,* 1879.

Twenty years after date, for value received, the county of Saline promises to pay to the bearer hereof, the sum of $1,000 in lawful money of the United States, at the office of the treasurer of the State of Illinois, in the city of New York, with interest at the rate of six per cent. per annum, payable annually, as shown by and upon the surrender of the annexed coupons as they severally become due,

reserving, however, the right to redeem this bond at any time after five years from date.

This bond is one of a series of 195 of like tenor, issued for the purpose of funding and retiring certain binding, subsisting, legal obligations of said county, which remain outstanding and unpaid, under the provisions of an act of the General Assembly of the State of Illinois, entitled: "An act to enable counties, cities, towns, townships, school districts and other municipal corporations to fund, retire and purchase their outstanding bonds, and other evidences of indebtedness, and provide for the registration of new bonds, or other evidences of indebtedness, in the office of the auditor of public accounts," approved February 13th, 1865, and acts amendatory thereto, approved April 27th, 1877, and June 4th, 1879, and in pursuance of a vote of the majority of the legal voters of said county, voting at an election legally called, under said act the 6th of November, 1883.

We hereby certify that all requirements of said acts have been fully complied with in the issue hereof.

In testimony whereof, we, the undersigned officers of said county, being duly authorized to execute this obligation on its behalf, have hereunto set our signatures this 1st day of July, A. D. 1885.

W. G. FRITH,
Chairman of the County Board.

[SEAL.] W. E. BURNETT,
County Clerk.

7 Each of said bonds was duly registered according to law with the auditor of the State of Illinois, who endorsed upon each of said bonds the following:

STATE OF ILLINOIS. $1,000.

Saline County Bond.

Date of bond, July 1st, 1885. Payable twenty years after date. Redeemable five years after date. Interest payable July 1st, annually. Principal and interest payable at the office of the State treasurer of the State of Illinois, in the city of New York, and State of New York.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *Nov. 23rd*, 1885.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled: "An act to enable counties, cities, towns, townships, school districts and other municipal corporations to fund, retire and purchase their outstanding bonds and other evidences of indebtedness, and to provide for the registration of new bonds, or other evidences of indebtedness, in the office of the auditor of public accounts." Approved

February 13th, 1865, and acts amendatory thereto, approved April 27th, 1877, and June 4th, 1879.

I further certify, that the aggregate equalized valuation of property assessed for taxation in said county for the year 1885, were certified to this office as follows:

Real estate, $1,362,931.00. Personal property, $477,340.00.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of my office, the day and year aforesaid.

[SEAL.] CHARLES P. SWIGERT,
Auditor Public Accounts.

The county of Saline appointed an agent to solicit the exchange of bonds and obtained from the appellants and cancelled the old bonds respectively held by them, and issued to them the funding bonds in lieu thereof. The county of Saline thereafter, until
8 the year 1890 paid the annual interest on such new issue of bonds.

Questions.

First. Is the county of Saline estopped by the recital in the funding bonds to assert that the bonds issued to the St. Louis & Southeastern Railway Company and to the Belleville and Eldorado Railroad Companies respectively and for which the funding bonds were exchanged were not binding, subsisting legal obligations of said county?

Second. Are the funding bonds so issued by the county of Saline legal, valid and binding obligations upon said county in the hands of a *bona fide* holder for value before maturity?

Third. If the court should be of opinion that the funding bonds are invalid would it be competent for the court in this cause, which is a suit in equity instituted by the county of Saline to restrain officers of the law from levying and collecting a tax as required by law to pay the interest upon the funding bonds, to grant the relief asked only upon condition that the county of Saline pay to the holders the amount of the valid bonds issued to the St. Louis and Southeastern Railway Company which were exchanged for the funding bonds?

WM. A. WOODS.
JAS. G. JENKINS.
R. BUNN.

9 United States Circuit Court of Appeals for the Seventh Circuit.

I, Oliver T. Morton, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages, numbered from one to eight, inclusive, contain a true copy of the certificate to the Supreme Court of the United States from the United States circuit court of appeals for the seventh circuit in the case of Luther R. Graves, D. B. Wesson, Society for Savings, and William Burgoyne *vs.* County of Saline, No. 173, October term, 1894,

as the same remains upon the files and records of said United States circuit court of appeals for the seventh circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago. this 14th day of December, A. D, 1895.

Seal United States Circuit Court of Appeals, Seventh Circuit.

OLIVER T. MORTON,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed on cover: Case No. 15,770. U. S. circuit court of appeals, seventh circuit. Term No., 886. Luther R. Graves, D. B. Wesson, Society for Savings, and William Burgoyne, appellants, *vs.* County of Saline. Filed January 14, 1895.

Office Supreme Court, U. S.
FILED,
FEB 12 1895
JAMES H. McKENNEY,
CLERK.

CERTIFICATE.

Supreme Court of the United States,

OCTOBER TERM, A. D. 1894.

NO. 886.

LUTHER R. GRAVES, D. B. WESSON, SOCIETY FOR SAVINGS AND WILLIAM BURGOYNE,
Appellants.

VS.

COUNTY OF SALINE.

On a Certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF AND ARGUMENT OF LUTHER R. GRAVES, ONE OF THE APPELLANTS, BY GEORGE A. SANDERS, HIS SOLICITOR.

WM. R. BOWERS,
Of Counsel.

IN THE

Supreme Court of the United States,

AT THE OCTOBER TERM, A. D. 1894.

NO. 886.

LUTHER R. GRAVES, D. B. WESSON, SOCIETY FOR SAVINGS AND WILLIAM BURGOYNE,

Appellants,

VS.

COUNTY OF SALINE.

On a Certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

QUESTIONS CERTIFIED.

FIRST.

Is the County of Saline estopped by the recitals in the funding bonds to assert that the bonds issued to the St. Louis and Southeastern Railway Company and to the Belleville and Eldorado Railroad Companies, respectively, and for which the funding bonds were exchanged, were not binding, subsisting legal obligations of said county? Record, p. 6.

The recitals referred to in the bonds, in the above question, are as follows, to-wit:

"This bond is one of a series of 195, of like tenor, issued for the purpose of funding and retiring certain binding, subsisting legal obligations of said county, which remain outstanding and unpaid, under the provisions of an act of the General Assembly of the State of Illinois, entitled 'An act to enable counties, cities, towns, townships, school districts and other municipal corporations to fund, retire and purchase their outstanding bonds, and other evidences of indebtedness, in the office of Auditor of Public Accounts,' approved February 13th, 1865, and acts amendatory thereto, approved April 27th, 1877, and June 4th, 1879, and in pursuance of a vote of the majority of the legal voters of said county voting at an election legally called under act, the 6th of November, 1883.

"We hereby certify that all requirements of said acts have been fully complied with in the issue hereof." *Record, p. 5.*

It is found by the Court below, that prior to November 6th, 1883, the date of the election to retire and refund the original railroad aid bonds issued to the Belleville & Eldorado and the Southeastern Railroad companies, the appellants were *bona fide* holders of their bonds. *Record, p. 1.* If so, the appellants are still *bona fide* holders of these refunded bonds in controversy, whether purchased in the commercial markets, or taken in exchange for the original railroad aid bonds.

The above question is, therefore, as to the binding effect of the recitals on the refunding bonds in the hands of

bona fide holders, and whether the County of Saline is estopped from denying that the original railroad aid bonds issued to the above railroad companies *were not binding, subsisting legal obligations of said county.*

It will be admitted without controversy, that there was ample authority from the Legislature in the acts referred to in the recitals on the bonds to refund and retire *binding, subsisting legal obligations of the said county* which remained outstanding and unpaid; and to fund, retire and purchase their outstanding bonds and other evidences of indebtedness, and to provide for the registration of the new bonds. That the only condition for the exercise of this power to refund municipal indebtedness, was a majority vote of the electors in favor of the refunding. *Record, pp. 3, 4.*

It is admitted in the Statement of Facts, *Record, p. 4,* that an election was ordered by the Board of County Commissioners and held November 6th, 1883, *according to law,* at which a majority of the legal voters of the county of Saline voted in favor of the paying, redeeming and refunding the original bonds issued in aid of the St. Louis & Southeastern and the Belleville & Eldorado Railroad companies. And the refunded bonds of $100,000 were issued July 1, 1885, to take up, pay off and refund the $75,000 issued in aid of the Belleville & Eldorado, and the $25,000 issued in aid of the St. Louis & Southeastern railroad companies *in strict conformity with said act.* Here the Court below find that *every thing* required of the board in the issue of the bonds and

concerning the election has been done according to law and in *strict conformity with the said act.*

The only question left then for discussion is: Had the Board of Commissioners the right to determine whether the original bonds *were binding, subsisting legal obligations* of the county?

As the county officials—the county board—they could lawfully bind the county by the recital of any and all facts, the existence of which it was their official duty to determine and facts that came within the scope of their official power and that pertained to the acts and obligations of the electors and the county, as a corporation, over which they had charge as a board of county commissioners.

This board, from their official position, knew it to be a fact that "pursuant to an election duly ordered and held on the 9th day of October, 1869, and in payment of subscriptions to stock of the Belleville & Eldorado railroad company bonds were issued, dated under date of January 15-1870 March 9, 1870 and to the St. Louis & Southeastern railway company, dated January 1, 1872. *Record, p. 1.* 2,

They knew it to be a fact, that the county of Saline received and held the certificates of stock from the rairoad companies which these bonds paid for, according to the vote of the electors.

They knew it to be a fact, that they and their county had regularly levied, collected and paid the interest as it became due through the state treasurer, from the date of these

bonds up to the date of the issue of the refunding bonds now in controversy July 1, 1885, *some 13 and 15 years.*

They knew it to be a fact, that *the validity of neither the original nor refunded bonds, into which they were funded by the election of Nov. 6, 1883, had ever been questioned, or decided by any Court, until the bill in chancery to declare void the refunded bonds of December 30, 1890, five years after the date of the refunded bonds, and the date of the recitals under discussion, was filed. Record, p. 2.*

They knew it to be a fact, that an election was called and duly held according to law, on the 6th day of November, 1883, at which a majority of the electors voted in favor of the proposition to refund the original railroad aid bonds, issued as aforesaid $100,000 at 8 per cent. interest, into refunded bonds now in controversy $100,000 at 6 per cent. interest.

They knew it to be a fact, that in accordance with that election, this same board ordered, Nov. 15, 1883, their chairmen and clerk to execute these refunded bonds in compliance with that election and vote of the electors. *Record, pp. 4, 5.*

They knew it to be a fact, that the refunded acts cited on the bonds, those of February 27, 1865, April 27, 1877 and June 4, 1879, were in existence and in full force, and that under those acts, *their board, the proper corporate authorities, had been named in the acts* to carry into legal effect all their

provisions as to refunding *binding, subsisting legal obligations of their county. Record, pp. 3, 4, 5.*

All THESE FACTS, it was the PECULIAR PROVINCE of this board *to know and determine and carry into effect*, because they were matters of record on the books of the county, which were under the control of this board, and because it was their duty by law, *having been named in the refunding acts for that purpose, and by virtue of their official position.*

Moreover, the Court below have found the above statements *to be facts*, when they say, *Record, p. 4*, "and the duly constituted officers of said county thereafter, on the 1st day of July, 1885, *issued the bonds of said county in strict conformity with said act*, to the amount in the aggregate of $100,000. to take up and pay off the said bonds so issued to the St. Louis & Southeastern Railway Company and to the Belleville & Eldorado Railroad Company."

They were, therefore, *the proper legal corporate authorities to determine the facts recited in the bonds, and their recitals are binding upon the county, and the county is estopped from denying the recitals upon the bonds in a contest with a bona fide holder of the refunded bonds as to their validity.*

In making the recitals that the original bonds *were binding, subsisting, legal obligations of the county*, it was not a question of *law*, but *of fact*, that the board decided. And the determination of the question whether those bonds *were binding, subsisting, legal obligations* was their lawful duty, by virtue of their official position and by reason of their being

named in the refunding acts, "as the *corporate authorities*" for that very purpose.

POWERS OF THIS BOARD DEFINED BY STATUTE.

In *Starr & Curtiss Stats. of Illinois, Vol. 1, p. 653*, is —Par. 25— *Powers of county board*, Sec. 25. The county boards of the several counties shall have power: *First*, to take and have the care and custody of all the real and personal estate owned by the county. *Second*, to manage the county funds and county business except as otherwise specially provided. *Third*, To EXAMINE AND SETTLE ALL ACCOUNTS AGAINST THE COUNTY, AND ALL ACCOUNTS CONCERNING THE RECEIPTS AND EXPENDITURES OF THE COUNTY.

This board had other powers, even of levying and collecting taxes and were a local Court for the transacting of the business of the county. Their judgment, or determination of any questions concerning the business upon which they were called to pass an opinion, unappealed from was as binding as that of any state or federal Court. They were thus by *statutory law*, authorized TO EXAMINE AND SETTLE ALL ACCOUNTS AGAINST THE COUNTY AND ALL ACCOUNTS CONCERNING THE RECEIPTS AND EXPENDITURES OF THE COUNTY.

Who can say, that under this statutory power, they had not the most ample authority to determine whether the original aid bonds *were binding, subsisting, legal obligations of said county*, and to recite on the refunded bonds their decision of that fact?

There is no possible question but that there was ample authority of law in the acts of the Legislature cited upon the bonds for the refunding of them. This being true, we *know of no case* where there was authority of law for the issue of the bonds, and where they were issued in conformity to the the law, and where the act of the Legislature imposes the duty of determining facts concerning the issue of the bonds upon officials of the corporation, and they determine the facts and make recitals to that effect upon the bonds that have been held void when in the hands of *bona fide* holders.

In the case at bar, we are within every rule of estoppel by recitals.

RULE OF ESTOPPEL BY RECITALS.

In *Coloma vs. Eaves, 92 U. S., 484*, decided October, 1875, the Court say: "Where, by legislative enactment, authority has been granted to a municipality, or to its officers, to subscribe for the stock of a railroad company, and issue municipal bonds in payment, but only upon some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the enactment that the officers of the municipality were vested with power to decide whether that condition has been complied with, *their recitals that it has been made in the bonds, issued by them and held by a bona fide purchaser*, IS CONCLUSIVE OF THE FACT, AND BINDING UPON THE MUNICIPALITY, FOR THE RECITAL IS ITSELF A DECISION OF THE FACT BY THE APPOINTED TRIBUNAL".

Commissioners, etc. v. Bolles, 94 U. S. 104.

Lynde v. The County of Winnebago, 16 Wall, 13.

St. Joseph Tp. v. Rogers, 16 id. 644.

Bissell v. Jeffersonville, 24 How., 287.

Van Hostrop v. Madison City, 1 Wall, 291.

Mercer County v. Hackett, id. 83.

Chaffee county v. Potter, 142 U. S., 358.

Pendleton v. Amy, 13 Wall, 297.

The above is the *general rule* with regard to the effect of recitals on bonds in the hands of a *bona fide* holder, where there was authority of law for the issue of the bonds and where the authority of law was coupled with conditions precedent to the issue of the bonds.

But the case at bar *is much stronger*, being a case of refunded bonds. Here the electors, the source of all power in this country, have voted twice to assume this indebtedness. First, to take stock in the railroad companies and pay for the same with bonds of the county, with 8 per cent. interest; and second, to refund this 8 per cent. bonded debt into 6 per cent. refunded bonds. On the original bonds, the county voluntarily and without complaint, or contest, paid interest for some 13 and 15 years, while on the refunded bonds interest was regularly paid for some 5 or 6 years. It would hardly be possible to find a stronger case *at law* in favor of the validity of these refunded bonds, and yet the county seeks to defeat and repudiate these bonds in the hands of a *bona fide holder in an equity proceeding.*

Fortunately for us this Court has decided the very questions at issue, in the certificate, in this case. We have shown above, we think, that the only precedent condition required by the refunding acts cited on the bonds, was a submission of the question as to whether the original bonds issued by the county in 1870 and 1872, *were binding, legal, subsisting obligations*, and whether they desired to refund them into a lower rate of interest refunding bond. The Court below, (*Record, p. 4.*) found *the fact to be* that *their refunded bonds were issued in strict conformity with said act.* This, of course includes *the election* which, in the act, was the only condition precedent to the issue of the refunded bonds.

All that the board did was to recite *on the bonds what the Court below found to be the facts: not the law in the case.* We are aware of the rule that recitals of officials on bonds are binding only as to matters of fact within the scope of their powers, and which it is their legal duty to determine, and do not estop the co-operation as to matters of law.

We especially call the attention of the Court to an Illinois case which we think completely covers every question raised by the certificate from the Court below.

It was decided in 1880, *before* the refunded bonds in the case at bar were issued. It was the law at the time they were issued and is the law now, as we think. The case is *County of Jasper v. Ballou, 103 U. S., 745.* In this case the facts are very much like those in the case at bar. Original bonds had been issued in aid of a railroad. There was some

doubt about the validity of the election. It was called by the board of supervisors when it was claimed it should have been called by the County Court. The bonds were refunded and then their validity was attacked on the ground of illegality of the original bonds. The old bonds were exchanged for the refunded bonds. In a suit to recover by a holder of the refunded bonds, this Court say (*p. 752.*): "There must be a time when the people, in their political capacity, are concluded by their contracts as much as individuals, and we think that where the people of a county, at an election held according to law, authorize their corporate or political representatives to treat certain outstanding county obligations, as '*properly authorized by law*,' for the purpose of negotiating a settlement with the holders, and the settlement which was contemplated has been made, *all contests as to the validity of the obligations must be considered as ended.*"

City of Shawneetown v. Baker, 85 Ill., 563.

Beach, on Public Corporations, *Vol. 2, p. 959*, says: "When the municipality has power to issue bonds, and they have been issued, it may substitute other bonds of the same nature in their stead, may change the form, though not the substance of its liability," *Sec. 928*. Again, *Sec. 929*, "The municipality, by the issue of the new bonds, waives any defences it may have to the old bonds. By the new issue it obtains an advantage in postponing the time of payment, and generally in the rate of interest."

Little Rock v. Merchants Savings Bank, 98 U. S. 308.

Portland Savings Bank v. Evansville, 25 Fed. Rep. 309.

Galena v. Corinth, 48 Ill. 423.

Maxey v. Williamson county, 72 Ill., 209.

Chiniquy v. The People, 78 id. 572.

County of Randolph v. Post, 93 U. S. 502, 513.

In *Pendleton v. Amy, 13 Wall, 297*, there was no election, and the Court say: "The county received in exchange for the bonds a certificate of stock of the railroad company, which it held for seventeen years before the present suit was brought and which it still holds. Having exchanged the bonds for the stock, we think the county cannot retain the proceeds of the exchange and assert against a purchaser of the bonds for value, that though the Legislature empowered it to make them, and put them upon the market, upon certain conditions, they were issued in disregard of the conditions."

Our case is vastly stronger than the last case cited, for there was a legal election for the original issue of bonds. The bonds were exchanged for certificates of the railroads, which are held to this day. There was an election for the refunding of the old bonds, and an exchange of the original bonds for the refunded bonds, and a payment of interest on the original and refunded bonds for some eighteen years, and the refunded bonds issued *in strict conformity to the act which authorized their issue* as found by the Court below.

Judge Drummond, of the U. S. Circuit Court, Southern District of Illinois, Fed. Rep. Vol. 4, p. 282, *Portsmouth Savings Bank v. City of Springfield, Illinois*, on this branch of the

subject says: "Having been issued for so long a time, the interest on them having been paid, and their validity having been recognized again and again in after years by the city authorities, it does seem as though it is too late now, under all the circumstances of this case, for the city to question their validity. I therefore hold that they are valid, and the city is liable. *It has issued the bonds, obtained the money and benefits it has conferred, and law and equity declare that the debt should be paid.*"

Another Illinois case where the city endeavored, *by a bill in Chancery*, to defeat an issue of refunded bonds on the ground that the original bonds had been issued in violation of constitutional requirements, is found in *76 Ill. 455, Burr et al v. City of Carbondale.* The method of procedure, and many of of the facts and the laws in part, are the same as in the case at bar. The Supreme Court of Illinois reversed the Circuit and Appellate Courts and held the refunded bonds vailid obligations of the city. The Court say, *p. 469*: "The principle has always been acknowledged by this and other courts, that the acts of a municipality done *under a power* and *in substantial conformity to the power, are binding.*" Again on *p. 478*, the Court say: "No charge of fraud, combination or oppression is made. Every act seems to have been fairly done and in pursuance of law. The disreputable feature of the case is, that the same authority doing all these acts, and whose city has received the benefit of them, now seeks to repudiate them, *"There is no rule of law, equity, justice or morals compelling this, and we cannot sanction it.*"

We call the attention of the Court to three well considered cases, in which the validity of the refunded bonds was attacked upon the ground that the original bonds were void for want of power and irregularity in their issue. The cases are—

Moulton v. City of Evansville, 25 Vol. Fed. Rep, 382.
Portland Savings Bank v. City of Evansville, id. 389.
Post v. City of Evansville, id. 393.

The opinion in these cases, we think carefully and ably prepared by Justice Woods, ought to have weight in the case at bar. On *pp. 388 and 389, supra*, the Court say: "All questions of doubt in relation to the validity of these bonds should be answered in favor of their legality, because the city *has recognized their validity repeatedly*, and has paid the interest on them for a series of years. Therefore, under such circumstances as these, it should appear beyond all doubt that the issue of the bonds was void." Citing upon this point—

County of Clay v. Society for Savings, 104 U. S. 579.

In *Hackett v. Ottawa, 99 U. S., 96*, the Court say: "A corporation quite as much as an individual, is held to a careful adherence to truth in their dealings with mankind, and cannot, by their representations or silence, involve others in onerous engagements, and then defeat the calculations and claims their own conduct had superinduced." And again, same page, *supra*, the Court say: "It would be the grossest injustice and conflict with all the past utterances of this Court, to permit the city, having power under some circumstances

to issue negotiable securities, to escape liability upon the grounds of the falsity of its representations, made through its official agents and under its corporate seal, as to the purposes with which these bonds were issued."

Bissell, et al v. City of Jefferson, 24 How.,287.

Ottawa v. National Bank, 195 U. S., 342.

The last citation is especially applicable when it is considered that all refunded bonds are regarded in all commercial transactions as safer and more desirable investments *because all questions of consideration are settled by the refunded obligation*, and all questions as to the original debt are waived, acknowledged and forever settled in the issuance of the new form of obligation of the refunded bonds, and also because this was a *bill in chancery* to restrain and enjoin the levy and collection to pay the interest and principal of these refunded bonds. There is no better established principle, always recognized by all courts, than that a corporation which seeks equity must act equitably with all parties. Into courts of equity the complainant must always come with clean hands and ready to do equity to all parties.

In a very recent case, *Risley v. Village of Howell*, Sixth Circuit Court of Appeals, Oct. 15, 1894, Vol. 64, *No. 4 Fed. Rep. 453*, in a very carefully prepared opinion, in which the U. S. Circiut Court was reversed. The Court say: "But if the power is found to exist and bonds have been issued in professed execution of the power, containing recitals of things done by the municipality or its officials in conformity

with the requirements of the authorizing statute, and those things are peculiarly within the knowledge and duty of the officials executing the bonds, there has been no relaxation of the rule which protects *bona fide* purchasers, relying upon the truth of representations made in the bonds, against the irregularities and frauds of the municipality, or the officials who represent it in the exercise of the power."

Again, *p. 457, supra*, the Court say: "The general rule of construction applies, that in determining the intent and meaning of any part, the general purpose of the whole is to be regarded, and it would seem a just rule also, that the meaning which the maker of an instrument intends and expects the other party to put upon it should be adopted, if the other has accepted it in that sense, and the words will bear that construction." Citing—

Hackett v. Ottawa, 99 U. S. 86, and

Ottawa v. National Bank, 105 U. S. 343.

Under the above rule, there can be no doubt but there was ample power in the acts cited in the bonds for refunding the old bonds issued by Saline county as aforesaid. *Record, pp. 2, 3, 4, 5.* Only two precedent conditions were necessary before the power could be used. The existence of *a valid indebtedness, for any valid indebtedness would be a binding, subsisting, legal obligation of the county,* and a vote of the electors in favor of changing the nature of the obligation, reducing the rate of interest and extending the time of payment into a refunded bond. The conditions precedent above

named and all of the facts concerning the election, the issue of the old bonds, the exchange of the old bonds for the certificates of stock and the continued holding of that stock and all the requirements of the acts for refunding of the old bonds were, in the language of the court just cited above, "*peculiarly within the knowledge and duty of the officials executing the bonds.*"

These officials, therefore, meant and intended to inform all purchasers of their refunded bonds, that they were *legally issued in payment of the old bonds which were "binding, subsisting, legal obligations of said county."*

Flagg v. School District No. 70, Barnes county, 58 N. W. Rep. 499.

They were offered for sale and in exchange for the old bonds with this intention and meaning, and were so purchased, and accepted for the old bonds, on the statements made in the recitals, and under all the rules of law and equity, and the decisions of all courts as to the effects of such recitals *the county is now estopped from denying that the original bonds were not binding, subsisting, legal obligations of the said county.*

The county board named in acts for that purpose had determined the facts and made a recital of such determination in the bonds, the electors of the county had ratified their decision and the county is estopped from denying the truth of the recitals.

Chaffee County v. Potter, 142 U. S. 364 (1891).
Town of Coloma v. Eaves, 92 id. 484.

Town of Venice v. Murdock, 92 id. 494.

Marcy v. Oswego, 92 id. 637.

Wilson v. Salamanca, 99 id. 499.

Northern Bank v. Porter Township, 110 id. 608.

Cairo v. Zane, 149 id. 122.

In the case at bar, the contention of the county is not that there was not ample power for the issue of the original bonds to the railroad companies, but that the county officials committed acts *ultra-vires* in extending the time for the railroads to complete their lines, and to some extent allowed the roads to change their routes through the county. But if we admit for the sake of the argument these charges, they amount at most, only to an *irregularity in the exercise of the power* and do not reach or touch the power itself. Under all decisions of the Federal courts, recitals made on the bonds of facts by the corporate officials whose legal duty it was to determine those facts recited, are binding and estop the corporation from denying such recitals on all original bonds when in the hands of *bona-fide* purchasers. Much more so, must this be the case where the original bonds upon an admitted vote of the people have been refunded as in the case at bar.

Chandler v. Town of Attica, 18 Fed. Rep. 303.

In the *Am. and Eng. Encl. of Law., Vol 15, p. 1263*, the writer says: "When a municipality has power to issue bonds, it may issue other bonds in renewal or redemption thereof." *Citing—*

Portland Sav. Bank v. Evansville, 25 Fed. Rep. 389.

Sullivan v. Walton, 20 Fla. 552.

Galena v. Corwith, 48 Ill. 423.

Also, "And when such new bonds are properly issued, *as under a vote of the people*, THE VALIDITY OF THE NEW BONDS CANNOT BE QUESTIONED." *Citing—*

Jasper Co. v. Ballou, 103 U. S. 745.

Little Rock v. Merchants' Nat., 98 id. 308.

In the case of *City of Cadillac v. Woonsocket Inst. for Savings, Circuit Court of Appeals, Vol. 7, p. 571, decided Nov. 20, 1893*, the Court say: "Recital in bonds issued by a city council under statutory authority that they are 'refunding bonds' issued to take up 'old bonds falling due,' estop the city from showing as against *bona-fide* holders that the old bonds were invalid, and therefore insufficient to support the issuance of the new ones." The court stating that the above case comes under the class of cases of which the *Town of Coloma v. Eaves, 92 U. S. 484; Hackett v. Ottawa, 99 id. 86, and Chaffee County v. Potter, 142 id. 355*, are examples.

The Court held, in *Chandler v. Town of Attica Circuit Court, N. D., New York, Vol. 18 Fed. Rep., 299*, that "When a town, acting through the properly constituted authorities, has for its own benefit destroyed its old bonds and issued new ones in their stead, it will not be allowed to urge the same defenses which might have been interposed to the surrendered obligations. These defenses and defects the holder of the new

bonds has a right to assume were settled, and waived by the canceling of the old bonds, and issue of the new."

In *Rich v. Town of Mentz, Circuit Court, N. D., New York, 18 Fed. Rep. 55*, the Court say: "These solemn obligations, issued to invite the investors of the world, should not be invalidated, except for grave and serious infirmities. Even if the question were a doubtful one, a construction should be given the statute which upholds the bonds rather than one that turns them into ashes in the hands of *bona-fide* holder." To the same effect are the following cases:

Whiting v. Town of Potter, Vol. 2 Fed. Rep. 517.

Town of Aroma v. Auditor, 15 Fed. Rep. 843.

In *Ashley v. Board of Supervisors, Vol. 60 Fed. Rep., p. 55*, the Court say: "Refunding bonds, payable to bearer, recited that they were issued by the board of supervisors in conformity with the provisions of an act authorizing the county to issue such bonds and provide for the retirement of outstanding bonds. *Held*, that the purchaser was not bound in the face of the recitals borne by the bonds to investigate the nature of the refunded indebtedness."

But we deem it needless to multiply citations, for we find no case in the books with similar facts as that at bar, where refunded bonds have been held void by a Court of competent jurisdiction, or any principle of law or equity upon which a rule can be established that will render void such bonds in the hands of a *bona fide* holder.

HOW INVALIDITY OF THE BOND IS CURED BY ACQUIESCENCE OR RATIFICATION OF THE MUNICIPALITY.

Daniels on negotiable instruments, Vol. 2, Fourth edition, Sec. 4, p. 570, says: "There are four ways according to the decisions of the United States Supreme Court, and some of the State Courts, in which the municipal corporation may estop itself, from objecting to the validity of corporate securities."

First. By its members failing to interfere and enjoin their issue when they are about to be executed and thereby acquiesing. *Citing—*

Supervisors v. Schenck, 5 Wall, 581.
Ferguson v. Landram, 5 Bush. Ky., 231.

Second. By their submitting to taxation to pay them.

Third. By their voting for or submitting to the payment of principal or interest by corporate officers. *Citing—*

Supervisors v. Schenck, 5 Wall, 581.
County of Ray v. Vansycle, 96 U. S. 687.
Clay County v. Society for Savings, 104 id. 579.

and many state cases.

Fourth. By receiving and keeping the proceeds or benefits of them. Citing—

Supervisors v. Schenck, 5 Wall, 581.
Pendleton v. Amy, 13 Wall, 305.
County of Ray v. Vansycle, 96 U. S., 687,

and a large number of state cases.

The case at bar comes within every one of the four conditions by which the municipal bonds are validated and cured of irregularities and defects in their issue by ratification. The only objections to the original bonds was that one of the roads did not pass, and did not establish a depot within one-half of a mile of the old court house in Raleigh and within one-half mile of the church of Galatia, the time within which the roads were to be completed had been extended in one case until March 9, 1877—these objections none of which *touch the power* to issue the original bonds. This Court has held time and again: "That the constitutional amendment of July 2, 1870, did not in any way interfere, affect, or destroy the power of municipal corporations to complete their contracts with railroad companies and to make their subscriptions to the stock of railroads where the same had been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption." The election for the original bonds was held Oct, 9, 1869, under the act of 1861—Pr. Laws of Illinois, 1861, p. 485, and of 1869 Vol. 3, p. 238 of Pr. Laws of Illinois, 1869. This election comes *within* the proviso of the constitutional amendment of July 2, 1870, and is not repugnant to it. The bonds were issued and delivered, *but not until the railroads were completed*, April 19, 1877, and the certificates of stock taken for them, which stock is still held by the county—Record, pp. 1, 2. Interest was paid on the old bonds for years and until exchanged for the refunded bonds, and interest paid on the refunded bonds until Dec. 30, 1889. There can be no question about the vote to refund Nov. 6, 1883,

and the payment of interest on the refunded bonds for some four years.

If all this does not constitute a ratification of what was done by the corporate authorities in the issue of the bonds, then it would be practically impossible to apply that doctrine to any issue of municipal bonds.

The power to issue the original bonds is nowhere denied, only that it was not strictly and literally executed in reference to the route within one-half mile of the church of Galatia, and a depot within one-half mile of the court house in Raleigh, that a depot was not built as stated above—and that the time for completing the roads was extended until 1877. But these are only irregularities in the execution of the power and with which the *bona-fide* holder of the refunded bonds, or the original bonds for that matter, has nothing whatever to do. He is protected by the recitals on the bonds under a continuous and unbroken line of decisions of this Court.

Pana v. Bowler, 107 U. S. 529.
Cairo v. Zane, 149 id. 122.
Daniels' Neg. Sec., Vol. 2, 4th Ed. 575.

There was a substantial compliance with all the conditions precedent to the issue of the original bonds, and that is all that is required.

County of Randolph v. Post, 93 U. S. 502.
Town of East Lincoln v. Davenport, 94 id. 801.

The roads were built through the county and accepted by the county board when the original bonds were issued and exchanged for the certificates of stock, still held by the county.

Meyer v. Brown, 65 Cal. 590.

Flagg v. School District No. 70, Barnes County, 58 N. W. Rep. 499.

The contention of the County is that after the adoption of the prohibition constitutional amendment of July 2, 1870, there was no power in the electors, or the county board, to change any of the conditions precedent to the issue of the original bonds. That some of these conditions precedent being changed the original bonds were void, and therefore the refunded bonds must be invalid.

But the whole argument for the county in this case, is fallacious in that it rests upon the untenable theory that the prohibitory amendment of July 2, 1870, applies to the issue of the original bonds to the railroad companies. *It does not, in any sense, touch or effect those bonds, because they were issued under and by virtue of the proviso* in that amendment. *If they were*, they are exempt from all effects of that amendment, *the same as if it had not been adopted. See schedule. Appendix.*

The numerous citations of the learned counsel for the county in the Court below, *do not apply*, for the reason that these bonds are saved from the power of the amendment and the constitution by THE PROVISO, and if they come under the *proviso*, they are absolutely *without* the power, and

effect of the constitution and the prohibitory amendment thereto.

The constitution of 1848 must govern as to all rights and duties of the officials of Saline county, as both issues of bonds to the railroads were under that instrument, and had nothing whatever to do with that of 1870, or its amendment of July 2, 1870.

In *People v. Cairo & St. Louis R. R. Co.*, *78 Illinois, 137*, the State Supreme Court say: "*Although the constitution of 1848 has been superceded by the present one*, STILL ALL RIGHTS ACQUIRED UNDER IT, OR UNDER LAWS PASSED WHILE IT WAS IN FORCE, MUST BE TRIED BY, AND ENFORCED AS THOUGH IT WAS IN FULL VIGOR."

Here the State Supreme Court admits all we claim on this question. For a debt was contracted by the vote of the people to issue the original bonds in payment of stock subscribed to the railroads of 1848 and rights accrued ~~thereunder~~ under the Constitution, under the constitution, which are protected under and by the *proviso* in the prohibitory amendment. And we have shown by numerous citations that this is the rule in this Court from *Randolph Co. v. Post*, in 1876, to *Cairo v. Zane*, in 1892.

It is needless to suggest that this *proviso* is the prohibitory amendment of July 2, 1870, and is just as valid and binding as any part of the amendment, or the constitution itself.

The schedule, *see appendix*, declares: "That no inconvenience may arise from the alterations and amendments made in the constitution of the State, and to carry the same into complete effect, it is lastly ordained and declared:

Section 1. That all laws in force at the adoption of this constitution, not inconsistent therewith, and *all the rights, actions, prosecutions, claims, and contracts of this State, individuals, or bodies corporate*, SHALL CONTINUE TO BE AS VALID AS IF THIS CONSTITUTION HAD NOT BEEN ADOPTED."

Section 4. County courts, for the transaction of county business in counties not having adopted township organization, *shall continue in existence and exercise their present jurisdictions* until the board of county commissioners, provided in this constitution, is organized in pursuance of an act of the General Assembly, and *County Courts in all counties shall have the same power and jurisdiction they now possess, until otherwise provided by general law. Appendix.*

There can be but one interpretation to the above schedule, and that is that the constitutional convention intended, that all contracts should be completed, and that all officials, county courts, and county boards should, *after the adoption of the constitutional amendment, have and exercise the same powers in carrying into effect all contracts entered into before* the constitutional amendment went into effect, *the same as if that instrument had not been adopted.*

Before the adoption of the amendment to the constitution this county board in the case at bar would have had un-

doubted power to have changed the conditions precedent to the issuing of the original bonds, and extended the time for the completion of the roads.

Our contention is, that this same power *remained after* the adoption of the constitutional amendment July 2, 1870: That the *proviso* in the amendment and the schedule cited above *continued* all the powers they possessed until *the contract* made by the vote of the electors on the 9th of Oct. 1869, to subscribe for the stock, issue the bonds, and receive the certificates of stock, *was completed the same as if the constitutional amendment had not been adopted.* This must be so. Otherwise the *proviso* is meaningless and is of no effect whatever.

But this Court has constantly sustained our construction of the effect of this amendment, the *proviso*, and the schedule as to the powers of municipal officials in executing contracts when the vote was held *under the existing laws, before* the prohibitory amendment of July 2, 1870, became effective, and the bonds *were issued after that time.* That the official powers existing at the time of the vote, or contract, were unaffected in any way by the adoption of that instrument.

We cite a few Illinois cases in which the vote was held *before* July 2, 1870, when the constitutional amendment went into effect, and the bonds issued *after* that time, when the contract made by the vote had been completed, and in which the bonds were held valid on the recitals.

County of Moultrie v. Savings Bank, 92 U. S. 631.
Stock subscribed December, 1869. Date of bonds Nov. 1, 1871. Decided 1875.

County of Randolph v. Post, 93 U. S. 502. Voted June 6, 1870. Date of bonds Jan. 1, 1872. Decided 1876.

Coloma v. Eaves, 92 U. S. 484. Voted July 28, 1869. Date of bonds Jan. 1, 1872. Decided 1875.

County of Warren v. Marcy, 97 U. S. 96. Voted Sept. 23, 1869. Date of bonds Jan. 25, 1871. Decided 1877.

County of Warren v. Post, 97 U. S. 110. Same facts as above.

County of Warren v. Portsmouth Sav. Bank, 97 U. S. 110. Same facts as above.

Brooklyn v. Ins. Company, 99 U. S. 363. Voted Sept. 20, 1869. Date of bonds Nov. 7, 1872. Decided 1878.

Roberts v. Bolles, 101 U. S. 119. Voted March 25, 1869. Date of bonds April 7, 1874. Decided 1879. Overruling case of *Williams v. Town of Roberts, 88 Ills. 1.*

Oregon v. Jennings, 119 U. S. 74. Voted June 33, 1870. Date of bonds Dec. 30, 1870. Decided 1886.

Insurance v. Bruce, 105 U. S. 328. Voted Sept. 7, 1869. Date of bonds Dec. 1, 1870. Decided 1881. The case of *Town of Eagle v. Kohn, 84.* Ill. distinguished.

Pana v. Bowler, 107 U. S. 529. Voted April 30, 1870. Date of bonds June 28, 1873. Decided 1882.

Cairo v. Zane, 149 U. S. 122. Voted July 1, 1867. Date of bonds July 1, 1872. Decided 1892.

The law in existence before the constitution of 1870 was that cities and counties could subscribe for stock on petition, etc., to the extent of $100,000. That the stock so subscribed for, or purchased, shall be under the control of the County Court of the county, or common council of the city, MAKING THE SUBSCRIPTION, OR PURCHASE, IN ALL RESPECTS AS STOCK OWNED BY INDIVIDUALS.

County of Randolph v. Post, 93 U. S. 508.

If these corporations could subscribe to stock in all respects as individuals, in railroad companies, they could certainly waive precedent conditions, in the interests of their people the same as individuals.

County of Randolph v. Post. 93, U. S. 513.
1 Dill Mun. Corps, Secs. 375, 383, 385, 398.

This Court say, in *Randolph County v. Post, supra,* speaking of the effect of the prohibitory amendment: "*The provision does not apply where such subscriptions have been authorized by law,*" *p. 508.*

In *County of Moultrie v. Savings Bank, 92 U. S. 631,* decided in 1875, this Court say: "The Board of Supervisors, acting under the authority of the act in question, could bind

the county by a resolution, which, in favor of private persons interested therein, might, if so intended, operate as a contract; and the obligation thereby assumed *would continue in force after July 2, 1870*, although the power to *enter into such a contract was after that date withdrawn*. The holder of the bonds purchased them before their maturity, and without notice of any defense. They recite that they are issued by the county in pursuance of the subscription of the capital stock of said company, made by the Board of Supervisors of the county, December, 1869, in conformity to the provisions of an act of the General Assembly above mentioned. *The purchaser was thus assured that the subscription was made when they had authority to make it; and it would be tolerating a fraud to permit the county, when called upon for payment, to set up that it was not made until after July 2, 1870, when their authority had expired.*" *P. 632.* "*The constitution of a state cannot impair the obligations of a contract; but the constitution of Illinois declares that the contracts of bodies corporate shall continue to be as valid as if it had not been adopted. The power to subscribe carried with it authority to issue bonds for the sum subscribed, and the subscription being valid, the bonds are equally so.*"

From the last above citations we see that wherever there was power to subscribe to the stock of a railroad company *under then existing laws before* the adoption of the prohibitory amendment of July 2, 1870, *that power remained in the officials to execute the contract by the issue of bonds in payment thereof,* AFTER *July 2, 1870, just the same as if the constitutiohal amendment had not been adopted.*

This has been the law in Illinois continuous and unbroken on this subject, as shown by the above cited cases, from 1875 to 1892, and is the law today on that subject.

In view of such clear and positive decisions, so many of them, and covering a period of almost twenty years by the highest Court in the land, it would seem that this question ought to be forever settled.

We can only say in the language of this Court, in the case of *Brooklyn v. Insurance Company, supra*, and quoted again in *Insurance Company v. Bruce, 105 U. S. 333: "It is now too late for the town to claim exemption, as against bona-fide purchasers, upon the ground that the railroad company disregarded its promise to construct the road, or upon the ground that its own officers delivered the bonds in violation of special conditions, of which the purchasers had no knowledge or notice, either from statute or otherwise."*

THE EXTENSION OF TIME FOR THE COMPLETION OF THE RAILROADS BY THE BOARD, NOT ILLEGAL.

The only other objection to the validity of the original bonds was, that the board extended the time for completing the contracts in building the railroads until some time in 1877. We think we have already shown, *supra*, that such extension of time was entirely within the terms of the *proviso* of the constitution. That the statutory powers given to this board, *supra*, were abundant to include this power, and that those powers *remained* unaffected by the constitutional amendment until

the contract made by the vote was fully executed by the issue of the original bonds and the receipt thereof of the certificates of the stock paid for by the bonds.

Not only that, but they were acting under statutory law then in full force and effect.

The Legislature had three times extended the time for completion of such railroads until 1883, long after their original bonds were issued and delivered.

Storr & Curtiss, Stat. Vol. 2, Ill. 113, pp. 1890-1891.

Private Laws Ill., 1874, p. 797 id., 1877, p. 155.

Id. 1883, 722, extending time to Sept. 1, 1883.

Both State and Federal Courts have decided this question, and held valid bonds issued under similar facts and this same constitutional amendment, *where the time was extended several times* for the completion of the contracts in building the railroads.

Maxey v. Williamson Co. 72 Ill. 207.

Randolph Co. v. Post, 93 U. S. 502, 513.

Cairo v. Zane, 149 id. 122; decided 1893.

We do not refer to that rule and long line of authorities by which municipal corporations may compromise and settle doubtful and disputed claims, because as shown above we think the original bonds valid obligations of the county, and even if they were not, the *bona fide* holder of the refunded bonds is not bound to inquire into the validity

of the original bonds, but may rely upon the recitals of the refunded bonds.

We, therefore, think we have shown that the county of Saline *is estopped* by the recitals in the funding bonds to assert that the bonds issued to the railroad companies, and for which the funding bonds were exchanged, *were not binding, subsisting, legal obligations of said county.*

QUESTION.

SECOND.

Are the funding bonds so issued by the county of Saline valid and binding obligations upon said county in the hands of a bona fide holder for value before maturity?

We think we have fully answered this question in our argument on the first question certified.

According to the findings of facts by the Court below these funding bonds must be valid, whether the original bonds were or not, when in the hands of a *bona fide* holder. He is protected by the recitals.

After reciting the funding acts, and the orders for, and the election and the results of the election, they say, *Record, p. 4,* "and *the duly constituted officers of said county thereafter, on the 1st day of July, 1885, issued the bonds of said*

county in strict conformity with said act, to the amount in the aggregate of $100,000, to take up and pay off the said bonds issued to the St. Louis & Southeastern Railway Company and to the Belleville & Eldorado Railroad Company.

There is no question raised but that there was ample power in the funding acts cited, to refund the old indebtedness, and if the Court below finds the refunded bonds *issued in strict conformity to that act*, they certainly ought to be valid and binding obligations upon said county in the hands of a *bona fide* holder for value before maturity. For the the electors voted to accept and endorse the indebtedness represented by the old bonds, and to pay them off with the funding bonds, at a lower rate of interest and for a longer time to run, which was a good consideration. And the duly appointed board, named for that purpose in the funding acts, and authorized so to do by their official position, determined and decided that all conditions precedent and necessary to be done, had been complied with and accomplished. *Nothing more could be done by the electors and the court officials to make these funding bonds valid.*

The Court below, in its findings of facts, *Record p. 2, admits that the $25,000 of bonds to the St. Louis & Southeastern Railway Company were valid obligations of the county in the hands of the appellants under the decisions of the Supreme Court in the cases of Insurance Company v. Bruce, 105 U. S. 328, and Oregon v. Jennings, 119 U. S. 74.*

The Court below also found that the $75,000 of bonds issued to the Belleville & Eldorado Railroad Company

were *void* even in the hands of *bona fide* purchasers for value, within the decision of *German Savings bank v. Franklin County, 128 U. S. 526.*

Whatever may be said as to the rule of construction in last above cited case, and of the correctness of the finding of the Court below, that the $75,000 of bonds issued to the Belleville & Eldorado Railroad Company were *void* under that decision, we reply, that it in no way affects this $75,000 of bonds issued to that road, because the case *was not decided until the October term, 1888*, while the bonds were issued and delivered on the 19th day of April, 1877, and dated March 9th, 1877, and payable twenty years after the 1st day of January, 1873, with the option of paying five years after date, and the vote to refund was taken five years and the funding bonds issued three years before the decision in the German Savings Bank case was rendered. Up to the date of the *German Savings Bank v. Franklin County* case Oct., 1888, the rule of law had been, and was, the same as laid down in the cases of *Insurance Company v. Bruce, decided Oct. 1881, and Oregon v. Jennings, decided in 1886, supra.* In that case the effect of the Constitutional Amendment of July 2nd, 1870, was again considered, and as to the effect of recitals and precedent conditions, the rule of law was the same as laid down in *Randolph County v. Post, U. S.* Decided 1876.

It will thus be seen that this $75,000 of *Belleville & Eldorado Railroad Company* bonds were issued under the rule of law laid down in *Insurance Co. v. Bruce*, and *Oreyan v. Jennings*, which had been the rule since 1876, as laid down in

Randolph Co. v. Post supra, and eleven years before the decision of *German Savings Bank v. Franklin Co., Oct. term, 1888.* These bonds, therefore, *cannot possibly be effected by a decision of Court rendered eleven years after they were issued and sold upon the market as negotiable securities.*

In *Douglas v. County of Pike, 101 U. S., 687*, this Court say: "After a statute has been settled by judicial construction, *the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself.*" And again, same page, the Court say: "So far as this case is concerned, we have no hesitation in saying that the rights of the parties are to be determined *according to law as it was judicially construed to be, when the bonds in question were put on the market as commercial paper.*" Again, same page, the Court say: "The new decisions would be binding in respect to all issues of bonds *after they were made*, but we cannot give them a retroactive effect without impairing the obligations of contracts long before entered into. This we feel ourselves prohibited by the constitution of the United States from doing."

It will thus be seen that the *German Savings Bank v. Franklin County, supra*, has nothing whatever to do with the last above mentioned bonds which were issued some eleven years before that case was decided, and that those bonds must be held valid obligations of the county under the laws and judicial decisions in existence when they were issued, delivered and sold upon the market. And even if it had, the doctrine therein contained as to conditions precedent, and

the value of recitals on bonds issued *after* the prohibitory amendment went into effect, have all been *reversed* and *overruled* in the case of *Cairo v. Zane, 149 U. S. 122.*

Under the second question, the funding bonds issued by the County of Saline *must be held valid* and binding obligations upon said county in the hands of a *bona fide* holder for value before maturity, *because*, as we have shown, we think, that both issues of the railroad bonds were valid that entered into these funding bonds, and *because* the Court below found that the funding bonds *were issued in strict conformity with the acts* cited on the bonds. *Record, p. 4.*

QUESTION.

THIRD.

If the Court should be of the opinion that the funding bonds are invaild, would it be competent for the Court, in this cause, which is a suit in equity instituted by the County of Saline to restrain officers of the law from levying and collecting a tax as required by law to pay the interest upon the funding bonds, to grant the relief asked for, upon condition that the County of Saline pay to the holders the amount of the valid bonds issued to the St. Louis & Southeastern Railwad Company which were exchanged for the funding bonds?

It seems to us that this question calls for no argument, inasmuch as it is addressed to the conscience of the chancellors of this Court, and is a question asked by the Court below as to what would be the proper practice under certain specified contingencies.

We would suggest, however, that in what seems to us the *impossible event* of this Court finding the funding bonds invalid, the county should at least be compelled to pay the face of the original bonds issued to the St. Louis & Southeastern R. R. Co., $25,000, with 8 per cent. interest thereon from the time of the default in payment of interest, until the date of payment of the bonds, and the accrued interest, costs of litigation, and that this sum be paid *pro rata* to the holders of the $100,000 of funding bonds before the relief prayed for in the bill be granted.

There are millions of refunded bonds in the State of Illinois and in the other States, that will be dependent on the decision of this Court on the above questions, and in the interests of the public welfare, and, as we think, of law and justice, these questions should be so decided as to uphold and validate these funding bonds.

GEORGE A. SANDERS, SOLICITOR,
FOR LUTHER R. GRAVES.

WM. R. BOWERS,
Of Counsel.

APPENDIX.

PROHIBITORY AMENDMENT.

CONSTITUTION OF 1870.

"No county, city, town, township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporations: *Provided, however*, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions when the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption."

In force July 2, 1870, *Starr & Curtiss, Stat. Ill., Vol. 1, p. 167.*

SCHEDULE.

"That no inconvenience may arise from the alterations and amendments made in the constitution of the State, and to carry the same into complete effect, it is lastly ordained and declared:

SECTION 1. That all laws in force at the adoption of this constitution, not inconsistent therewith, and all the rights, actions, prosecutions, claims, and contracts of this State, individuals or bodies corporate, shall continue to be as valid as if this constitution had not been adopted.

SECTION 4. County Courts for the transaction of county business in counties not having adopted township organizations, shall continue in existence and exercise their present jurisdiction until the Board of County Commissioners, provided in this constitution, is organized in pursuance of an act of the General Assembly, and county courts in all counties shall have the same power and jurisdiction they now possess until otherwise provided by general law.

Id. Supra p. 168–169.

AN ACT TO INCORPORATE THE BELLEVILLE AND ELDORADO RAILROAD COMPANY. *In force February 22, 1861.*

Private Laws of Illinois, 1861, p. 485.

SECTION 5. Any incorporated city, town or county, situate on or near the line of said road, may subscribe to the capital stock of said company any sum, not exceeding one hundred thousand dollars: *Provided*, a majority of the legal voters, voting on that question shall have voted in favor of such subscription, if the notice given and the election held shall have been in conformity with the laws in regard to other special elections; and, to this end, the county court or

board of supervisors may, from time to time, order elections and specify the amount proposed to be subscribed, as they may deem expedient; and the clerks of the county court or board of supervisors shall receive the poll books and canvass the votes and report the same, as in other elections.

SECTION 7. All the rights, privileges and immunities necessary to carry into effect the provisions of this act, not granted herein, may be obtained under the laws now in force in this State.

SECTION 8. This act shall be deemed a public act, and be in force from and after its passage.

Approved February 22, 1861.

AN ACT TO INCORPORATE THE ST. LOUIS AND SOUTHEASTERN RAILROAD COMPANY. *In force March 10, 1869.*

Private Laws of Illinois, 1869, Vol. 3, p. 238.

SECTION 15. The several counties in which any part of said railway may be hereafter located, or that may lie on or near the line of the railway, and the several townships in such counties which have adopted, or may hereafter, township organization, and the cities and incorporated towns in the said counties, are hereby authorized to subscribe and take stock in said company, upon the application of said company, for such an amount as they may think proper, payable in bonds, lands or right of way, and subject to such agreement

and stipulations, as to the route of said railway, the time of delivery and payment of the bonds as may be agreed upon: *Provided*, that no subscription shall be made by any county court, nor by legal authorities of any incorporated city, town or township, until after the question of such subscription shall have been submitted, by order of the county court, or other legal authorities of said city, town or township to the legal voters thereof, at a general or special election to be called, conducted and returns made, canvassed and published in the usual manner of conducting elections in said county, incorporated city or town or township. All such notices shall have the amount of such subscription that would be submitted at such election, at which election each voter shall vote a ticket, upon which is printed or written, "For subscription," or "Against subscription," and if a majority of the ballots cast at such election shall be "For subscription," it shall be the duty of the county court or legal authorities of such incorporated city, town or township, to subscribe the amount stated in the order of election to the stockholders of said company.

SECTION 16. Elections may be held in any such county, incorporated city or town or township upon the question whether such county, city, town, or township shall subscribe for any specified amount of the capital stock of said railway company whenever a petition shall be presented, as hereinafter described; and as often as may be required by petitioners, whenever a petition shall be presented to the county clerk, signed by fifty legal voters of any such county, setting forth

the amount of stock to be taken by such county, and specifying the time for holding such an election, it shall be the duty of the county clerk of any such county to give thirty days' notice of the time for holding such election, which time shall be the same as that specified in said petition; and whenever a petition shall be presented to the supervisors of any such township, or to the corporate authorities of any such city of town, signed by twenty-five legal voters of any such township, city or town, setting forth the amount of stock proposed to be taken by any such township, city or town, and specifying the time for holding such election, it shall be the duty of the supervisors of every such township and the duty of the clerk of every such city or town to give thirty days' notice of the time of holding such election in such township, city or town, which time shall be the same as that specified in such petition; and all such notices shall be given in the same manner, and such elections shall be conducted and returns made, canvassed and published in the same way and at the places provided for holding general elections, in such counties, townships, cities and towns; at which elections the qualified voters of the respective counties, townships, cities, and towns shall vote "For subscription" or "Against subscription" and if a majority of the votes cast at such election, by voters voting on that subject, shall be "For subscription" it shall be the duty of the county court or board of supervisors of every such county, the supervisors and clerk of such township, and the corporate authorities of such city or town to subscribe, at once, upon the request of the directors or corporators of said company, the same amount so voted for,

and to issue and deliver to said company, the same amount as the stock so subscribed of the bonds of such county, township, city or town, as the case may be, payable at any time specified, not exceeding twenty years from date, or sooner, at the option of the county, township, city or town issuing the same, with interest coupons attached to the same at a rate not exceeding eight per cent., payable annually or semi-annually; which said bonds will be of such denominations and the principal and interest payable at such place or places, either within or without the state as may be agreed upon: *Provided*, that at any election held under the provisions of this act at any other time than the time for holding general elections for state and county purposes, it shall not be necessary for the several boards of registry to make a new register of the several voting precincts, but the register made of the legal voters at the last general election held for the election of state and county officers, may be used: *And provided*, that the vote of any legal voter whose name does not appear on the said register, shall be received and taken in the same manner that unregistered legal voters (votes) are taken at any general election.

SECTION 18. It shall be the duty of the respective authorities of the several counties, townships, cities and towns which may make such subscriptions and donations, and they are hereby required, to levy and collect a sufficient special tax on all the taxable property, both real and personal, in such counties, townships, cities and towns, to pay the interest, annually or semi-annually, accruing on such bonds, and to discharge the principal and interest, respectively, thereof.

Office Supreme Court, U. S.
FILED.
MAR 18 1895
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1894

Luther R. Graves, D. B. Wesson, Society for Savings and William Burgoyne,
Appellants,
vs.
The County of Saline,
Appellee.

CERTIFICATE.
NUMBER 886.

On Certificate from the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF AND ARGUMENT

OF

D. B. WESSON, SOCIETY FOR SAVINGS and WILLIAM BURGOYNE, Three of the Appellants.

THOMAS C. MATHER,
THEIR SOLICITOR.

JAMES A. CONNOLLY,
JOHN C. MATHIS,
OF COUNSEL.

THE GUNTHORP-WARREN PRINTING COMPANY, 89 DEARBORN ST., CHICAGO.

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BRIEF AND ARGUMENT

OF

D. B. WESSON, SOCIETY FOR SAVINGS and WILLIAM BURGOYNE, Three of the Appellants.

STATEMENT OF THE CASE.

This cause is before the Supreme Court of the United States for its opinion and instructions on certain questions propounded by the Circuit Court of Appeals for the Seventh Circuit which follow a statement of facts prepared by said Court of Appeals.

The original action was a suit *in equity* brought by the *County of Saline as complainant* against the treasurer and Auditor of Public Accounts of the State of Illinois and the collector of taxes and clerk of the County Court of Saline County, Illinois, to restrain the levy and collection

of the tax required to be levied by the Auditor of Public Accounts of the State of Illinois to pay the interest on one hundred (100) registered refunding bonds of the county of the following tenor, to wit:

United States of America,
State of Illinois,
No.... County of Saline, $1,000
Funding Bond.
Issued under act of 1865.

As amended April 27th, 1877 & June 4th, 1879.

Twenty years after date for value received, the County of Saline promises to pay to the bearer hereof the sum of one thousand dollars, in lawful money of the United States at the office of the treasurer of the State of Illinois, in the City of New York, with interest at the rate of six per cent. per annum, payable annually as shown by and upon the surrender of the annexed coupons, as they severally become due, reserving, however, the right to redeem this bond at any time after five years from date.

This bond is one of a series of one hundred and ninety-five of like tenor, issued for the purpose of funding and retiring certain binding, subsisting legal obligations of said county which remain outstanding and unpaid, under the provisions of an act of the General Assembly of the State of Illinois, entitled "An Act to enable Counties, Cities, "Towns, Townships, School Districts, and other municipal corporations, to fund, retire and purchase their outstanding bonds and other evidences of indebtedness, "and to provide for the registration of new bonds or "other evidences of indebtedness, in the office of the Auditor "of Public Accounts," approved February 13, 1865, and acts amendatory thereto, approved April 27, 1877, and

June 4, 1879, and in pursuance of the vote of a majority of the legal voters of the said County, voting at an election duly called and held under said act, on the sixth day of November, A. D. 1883.

We hereby certify that all the requirements of said acts have been fully complied with in the issue thereof.

In testimony whereof, we, the undersigned, officers of the said county, being duly authorized to execute this obligation on its behalf, have hereunto set our signatures, this 1st day of July, A. D. 1885.

W. G. FRITH,
Chairman of the County Board.

[SEAL.]

W. E. BURNETT,
County Clerk.

(Copy of one coupon.)

"On July 1st.

No. ——

The County of Saline, State of Illinois, will pay the bearer, at the office of the treasurer of the State of Illinois, in the City of New York, the sum of..... dollars, lawful money of the United States, being interest due to date on bond No.....

W. G. FRITH,
Chairman of the County Board.

W. E. BURNETT,
County Clerk."

Each of said bonds was duly registered according to law with the auditor of the State of Illinois, who endorsed upon each of said bonds the following:

"AUDITOR'S OFFICE, ILLINOIS.

"SPRINGFIELD, Nov. 23rd, 1885.

"I, Charles P. Swigert, Auditor of Public Accounts "of the State of Illinois, do hereby certify that the within

"bond has been registered in this office this day, pur-
"suant to the provisions of an act entitled: 'An Act to
"enable counties, cities, towns, townships, school dis-
"tricts, and other municipal corporations, to fund,
"retire and purchase their outstanding bonds and other
"evidences of indebtedness, and to provide for the regis-
"tration of new bonds, or other evidences of indebted-
"ness in the office of the auditor of public accounts,' ap-
"proved February 13, 1865, and acts amendatory
"thereto, approved April 27, 1877, and June 4th, 1879.

"I further certify that the aggregate equalized valua-
"tions of property assessed for taxation in said county
"for the year 1885, were certified to this office as
"follows:

"Real estate, $1,362,931.00. Personal property,
"$477,340.00.

"In testimony whereof, I have hereunto subscribed
"my name and affixed the seal of my office, the day and
"year aforesaid.

"CHARLES P. SWIGERT,
"*Auditor Public Accounts.*"

(Ctf., 6, 7.)

Luther R. Graves, one of the holders of such refunding bonds intervened in the Circuit Court of Saline County, and had the cause removed to the Circuit Court of the United States for the Southern district of Illinois, where the Society for Savings, D. B. Wesson and William Burgoyne, other holders of such bonds, also filed intervening petitions. Hearing was had before Allen, District Judge, and decree entered granting the injunction sought by the county; from which decree, under certain assignments of error, appeal was taken to the Circuit Court of Appeals for the Seventh Circuit.

In no place has the County of Saline claimed that there were any irregularities in the issue of the refunding bonds in question, but it is conceded that the issue of said refunding bonds was made in strict and full compliance with the provisions of law. (Ctf., 5.) The only point urged by the county to defeat the refunding bonds was that the issues of original bonds, to wit: $75,000 of bonds issued to the Belleville and Eldorado Railroad Company, and $25,000 of bonds issued to the St. Louis and South Eastern Railway Company, were void (it being further conceded that the total amount of refunding bonds issued in the form above set forth was $100,000).

The Circuit Court of Appeals, in its statement of facts, states that the intervening bondholders were *bona fide* holders for value of portions of these issues of original railroad aid bonds (Ctf., 1), and exchanged them *at the solicitation of the county* for the refunding bonds in question. (Ctf., 7.)

The statement of the Circuit Court of Appeals also contains the following:

"The bonds issued to the St. Louis and Southeastern "Railway Company were valid obligations of the county "in the hands of the appellants under the decisions of "the Supreme Court in the cases of *Insurance Company* v. "*Bruce*,, 105 U. S., 328, and *Oregon* v. *Jennings*, 119 "U. S., 74.

"The bonds issued to the Belleville and Eldorado Rail-"road Company were void, even in the hands of *bona* "*fide* purchasers for value within the decision of *German* "*Savings Bank* v. *Franklin County*, 128 U. S., 526.

"The bonds to the St. Louis and Southeastern Railway "Company were issued before, and those to the Belle-"ville and Eldorado Railroad Company were issued after

"the decision of the Supreme Court of Illinois, in the "case of the *Town of Eagle* v. *Kohn*, 84 Ill., 292, de- "cided in 1876.

"The validity of none of these bonds was at any time "questioned by the County of Saline until December 30, "1889, and the county had annually paid the interest on "all of these bonds from the time of their issue until "they were exchanged for funding bonds of the county "as hereinafter stated.

"The County of Saline has always retained and now "has the stock in said railway companies obtained by it "for the bonds so issued to said railway companies re- "spectively; but such stock is now and always has been "wholly worthless and of no value." (Ctf., 3.)

And submits the following questions for the instructions of this court:

"1st. Is the County of Saline estopped by the recital "in the funding bonds to assert that the bonds issued to "the St. Louis and Southeastern Railway Company and "to the Belleville and Eldorado Railroad Companies re- "spectively, and for which the funding bonds were ex- "changed, were not binding, subsisting legal obligations "of said county?

"2nd. Are the funding bonds so issued by the County "of Saline legal, valid and binding obligations upon said "county in the hands of a *bona fide* holder for value be- "fore maturity?

"3rd. If the court should be of the opinion that the "funding bonds are invalid would it be competent for the "court in this cause, which is a suit in equity instituted "by the County of Saline to restrain officers of the law "from levying and collecting a tax as required by "law to pay the interest upon the funding bonds, to grant

"the relief asked only upon the condition that the county "of Saline pay to the holders the amount of the valid "bonds issued to the St. Louis and Southeastern Railway "Company which were exchanged for the funding bonds?"

The Society for Savings is the holder of $25,000 in amount, D. B. Wesson of $5,000 in amount and William Burgoyne of $5,000 in amount of the funding bonds.

ARGUMENT AND BRIEF.

FIRST QUESTION.

IS THE COUNTY OF SALINE ESTOPPED BY THE RECITAL IN THE FUNDING BONDS TO ASSERT THAT THE BONDS ISSUED TO THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY AND TO THE BELLEVILLE AND ELDORADO RAILROAD COMPANIES, RESPECTIVELY, AND FOR WHICH THE FUNDING BONDS WERE EXCHANGED WERE NOT BINDING, SUBSISTING LEGAL OBLIGATIONS OF SAID COUNTY?

The county rests its case solely on the ground that the original bonds were void.

IT IS ADMITTED THAT ALL PROCEEDINGS HAD CONCERNING THE ISSUE OF THE REFUNDING BONDS WERE, IN ALL RESPECTS REGULAR.

We contend for and ask the court to consider the following propositions:

FIRST: THE COUNTY OF SALINE AT THE TIME OF THE ISSUE OF THE REFUNDING BONDS IN QUESTION, HAD THE POWER TO FUND OR REFUND ITS PREVIOUSLY ISSUED BONDS OR OTHER EVIDENCES OF INDEBTEDNESS OR ITS PREVIOUSLY CONTRACTED DEBTS; WHICH WERE THE BINDING, SUBSISTING, LEGAL OBLIGATIONS OF SUCH COUNTY, WHICH REMAINED OUTSTANDING AND UNPAID.

SECOND. THE COUNTY OF SALINE, AT THE TIME OF THE ISSUE OF THE REFUNDING BONDS IN QUESTION, BY ITS PROPER CORPORATE AUTHORITIES AND ITS PEOPLE VOTING PURSUANT TO FULL NOTICE, WAS THE BEST, AND UNDER THE LAW, THE ONLY JUDGE OF WHAT ITS OUTSTANDING AND UNPAID PREVIOUSLY ISSUED, BINDING, SUBSISTING AND LEGAL OBLIGATIONS WERE.

THIRD. AFTER THE COUNTY, BY ITS PROPER CORPORATE AUTHORITIES, PURSUANT TO A VOTE OF THE PEOPLE, HAD PROCLAIMED ITS DECISION, AND PUBLICLY RECOGNIZED AND SAID THAT THE ORIGINAL BONDS WERE BINDING, SUBSISTING, LEGAL OBLIGATIONS AGAINST IT, IT IS ESTOPPED FULLY AND COMPLETELY FROM RAISING ANY FURTHER QUESTION AS TO THE VALIDITY OF THE SAME; AND ANY HOLDER OF ONE OF THE REFUNDING BONDS WOULD HAVE THE UNQUESTIONABLE RIGHT TO RELY SOLELY UPON THE RECORD GOVERNING THE REFUNDING BONDS, AND BY NO STRETCH OF THE LAW WOULD BE REQUIRED TO LOOK FURTHER.

FIRST. As to the first proposition there can be no controversy, for the language of the law is:

"SECTION 1. In all cases where any county * * * has issued bonds * * * or has contracted debts, which are the binding, subsisting legal obligations of such county * * * and the same remain outstanding and unpaid, it shall be lawful for the proper corporate authorities of any such county, upon the surrender of any such bonds, etc., * * * to issue, in lieu thereof or place thereof * * * new bonds prepared as hereinafter directed. * * * And it shall also be lawful for the proper corporate authorities of any such county * * * to cause to be thus issued, such new bonds, and sell the same to raise money to purchase or retire any or all of such outstanding bonds * * * All bonds * * * issued under the provisions of this act, shall show upon their face that they are issued under this act, *and the purpose for which they are issued*, and shall be of uniform design and style, etc. * * * *And provided further*, That no new bonds, or other evidences of indebtedness, shall be issued under this act, unless the same shall be first authorized * * * by a vote of a majority of the legal voters of such county, * * * voting at some general * * * or special election."

"SEC. 3. It shall be lawful for the corporate authorities of any such municipal corporation, * * * on the petition of ten legal voters, * * * to submit to

the voters thereof at any general or special election, the question of issuing bonds under this act, by posting a notice, etc., * * * which shall state the number and amount of bonds proposed to be issued; the kind or class thereof, * * * the amount of each, the rate of interest, * * * when and where payable, *for what purpose issued*, etc."

"If the majority of the votes cast be for issuing the bonds, the same shall be issued in conformity to the specifications of said notice."

"SEC. 4. * * *

No bonds issued under this act shall be entitled to registration in the office of the State auditor, until a sworn certificate shall have been filed with him, showing that all the requirements of this act have been fully complied with, in their issue. In the case of county bonds, such affidavits shall be made by the chairman of the county board." * * *

See Appendix.

Laws of Illinois, 1879, pages 229, 234.

Starr & Curtis' Statutes, Vol. 2, Chap. 113, Secs. 1 to 11.

SECOND: The second proposition contended for calls for an interpretation of the law just referred to, and becomes of the greatest importance in this suit, because of the position of the county, that it had no power to act for itself or judge of the legality or the binding character of its outstanding obligations at the time the refunding took place. If it is true that the purchaser, from a municipality, of a refunding bond is compelled to examine all the records relating to the original indebtedness, and to assume all risks of having all or some portion of the original indebtedness subsequently repudiated, and then have all questions in connection with the original debt litigated in connection with his refunding bonds; it is highly important that this court should announce this rule so that

investors and municipalities can govern themselves accordingly, for it is understood that the rule now is that the purchaser of refunding bonds can depend upon the findings of the municipality offering the same as to the validity of the original indebtedness.

Beach on Public Corporations, Sec. 929.
Am. & Eng. Enc. of Law, Vol. 15, p. 1,263.

Our understanding of the law is, and our contention will be that the Illinois law, above quoted, *conferred the power on municipalities to fund or refund all debts which*, BY THEM, THROUGH THEIR PROPER OFFICERS, AND, PURSUANT TO A VOTE OF THEIR PEOPLE, WERE DETERMINED TO BE THEIR BINDING, SUBSISTING AND LEGAL OBLIGATIONS.

Reference is invited to the provisions of the law (Laws of Illinois, 1879, page 229) in section 1 of which it is provided:

"It shall be lawful for the proper corporate authorities of any such country (*i. e.*, one having outstanding indebtedness), upon the surrender of any such bonds (*i. e.*, bonds previously issued) or other evidence of indebtedness, or any number or portion thereof, to issue, in lieu or place thereof, new bonds prepared as hereinafter directed."

It is plain that, in the matter of exchange, the proper corporate authorities are, pursuant to the vote of the people, *by law made the judges of what bonds, etc., are to be taken up as the outstanding, binding, legal indebtedness of the county, or other municipality, in exchange for new bonds.*

And further, the law states:

"It shall also be lawful for the proper corporate authorities of any such county, etc., to cause to be thus issued such new bonds, and sell the same to raise money to pur-

chase or retire any or all of such outstanding bonds, etc. * * * The proceeds of the sales of such new bonds to be expended, under the direction of the coporate authorities aforesaid, in the purchase or retiring of the outstanding bonds, etc."

Here, again, the law *gives the proper authorities the power of judging and determining what bonds shall be purchased and retired so far as legality is concerned, subject only to the vote of the people.*

The act also provides that before new bonds can be issued, the question must be carried at an election of the people by a majority vote, and, section 3 provides for the form, etc., of the election notice, which shall state the number and amount of bonds proposed to be issued, the kind or class thereof, the amount of each, the rate of interest, when and where payable and FOR WHAT PURPOSE ISSUED.

In the case at bar it is admitted that all proceedings were legally held, so far as the issuing of the funding bonds is concerned. The election notice specified the exact purpose for which the bonds were issued, viz: *to fund the outstanding, original bonds issued to the Belleville and Eldorado Railroad Company and the St. Louis and Southeastern Railway Company.* (Rec., Ct. Ct. Ap., 115.)

Therefore, our claim is:

A. The people, by their vote, had THE POWER *to say whether the original bonds were legal or not.*

B. The corporate authorities had the power, pursuant to the vote of the people, to recognize the original bonds as valid.

C. Acting upon this power, the people's vote and the acts of the county board are conclusive on the question as

to whether the original bonds were binding, subsisting, legal bonds, or not.

As to the correctness of our position, we invite attention to the case of *Meyer* v. *Brown*, 65 Cal., 590. This was a case arising under an act of the California legislature passed in 1858, to enable the County of Sacramento to fund the *outstanding, legal obligations* of Sacramento County and City.

Section 37 of the act provided for the manner in which claims then outstanding against the City and County of Sacramento could be liquidated, funded and paid, to wit: by the issuance of new bonds prepared by the treasurer.

Sec. 38, provided that only all "*legal*" debts and liabilities against the city or county then outstanding could be so funded and paid.

Sec. 42, provided: "It shall be the duty of the president and clerk of the board of supervisors, to attend, at least once in each month, while such bonds (funding) are being issued, to examine all claims received by the treasurer, as aforesaid, and cause the same to be registered and canceled, in such manner as will prevent them from being re-issued or put in circulation."

Suit was brought attacking the validity of the funding bonds, or some of them, and in deciding the case the court said:

"At the trial before the referee defendants offered to prove facts, which it is claimed, would have shown that certain of the bonds described in the complaint herein, the payment of which is sought to be enforced by the mandate of this court, were issued in consideration of the surrender of bonds purporting to represent indebtedness of the City of Sacramento, which bonds (last named) had been illegally issued, and did not constitute valid claims against the city." * * * "*We deem it unnecessary to inquire whether, assuming the facts to be implied by the*

defendants' offer of evidence, the bonds, in lieu of which the bonds in suit were issued, were invalid. True, the act of 1858 (Stats. 1858, Cal., p. 280) provided that all "legal" claims might be funded, but as we understand the provisions of that act, *the president of the board of supervisors, the clerk of the board, and the treasurer* WERE AUTHORIZED TO DETERMINE ON BEHALF OF THE CITY AND COUNTY OF SACRAMENTO, THE LEGALITY OF EACH CLAIM PRESENTED, *and if satisfied of its legality, to issue a bond or bonds therefor.* * * * The bonds recite that they were issued in accordance with the law of 1858; they and the coupons attached are signed and authenticated as required by law. They are exactly such bonds as would have been authorized had the officers of the city and county indisputably allowed only 'legal' debts and liabilities of the former corporation, the City of Sacramento. At the trial the *bona fides* of the plaintiff being conceded, there was but one question to be decided, to wit: were the bonds such as the city and county had power to issue? No question of irregularity, or even fraud on the part of the agents of the municipality could be considered. *Ronedon* v. *Jersey City*, 17 Rep., 253; *East Lincoln* v. *Davenport*, 94 U. S., 801; *Pompton* v. *Cooper Union*, 101 U. S., 196; *Sherman* v. *Simmons*, 109 U. S., 737; *Louisiana* v. *Pittsburgh*, 105 U. S., 278."

Meyer v. *Brown*, 65 Cal., 590.

Hill v. *Peekskill Sav. Bank*, 101 N. Y., 490.

Little Rock v. *Merchants' Nat. Bank*, 98 U. S., 308.

In a late case decided by the Circuit Court of Appeals for the Sixth Circuit, where the legality of refunding bonds was under consideration on the defense that the original bonds were void, the court said in its original opinion.

"It (the county) sought and obtained from the legislature authority to refund its debt. It procured the surrender of the former bonds and issued in their stead, and

in consideration of them, the new bonds. If the legislature did not assume the former bonds to be valid, *it devolved upon the board of supervisors* of the county *to determine what were valid obligations* of the county in exercising the authority to issue new bonds, conferred by the act, *and such determination would bind the county.*" (60 Fed. Rep., 66.)

And again:

"To require a purchaser of refunding bonds to scrutinize the successive issues in which the debt has been refunded, to its root, would seriously impair the market value of the bonds, and thus work injuriously to the interests of the municipality issuing them." (60 F. R., p. 67.)

Again, in delivering the opinion of the court, on February 5, 1894, in refusing a rehearing, Judge SEVERENS said: "The reason next assigned why a rehearing should be had is that the holding of the court 'that because the bonds were issued to refund a debt, and not to raise money to erect public buildings, no vote of the people was necessary,' is based in part upon the fact that the board of supervisors has sole power to pass upon claims against the county. This, it is said, is in direct conflict with a decision of the Supreme Court of Michigan in *Supervisors* v. *Warren*, 56 N. W., 1,111.

"In passing we observe that the petitioner's statement of our own opinion is rather broader than our language warrants. BUT IF IT BE RESTRICTED TO THE PROPISITION THAT, IN THE EXERCISE OF THE AUTHORITY CONFERRED BY THE ACT OF 1885 UPON THE BOARD OF SUPERVISORS TO ISSUE THE NEW BONDS, IT WAS, BY NECESSARY IMPLICATION, EMPOWERED TO DETERMINE THE VALIDITY OF THE REFUNDED DEBT, WE ACCEPT IT AS CORRECT." (60 F. R., p. 70.)

"AGAIN, TO THE FURTHER SUGGESTION THAT IT WOULD FOLLOW FROM THE DECISION DELIVERED BY THIS COURT, THAT THE BOARD OF SUPERVISORS MIGHT AUDIT FRAUDULENT CLAIMS AND ISSUE BONDS FOR THEM, AND THE COUNTY BE REMEDILESS, IT MAY BE ANSWERED, THAT RESPONSIBILITY OF THIS KIND MUST BE DEVOLVED UPON SOMEBODY, AND, IT WOULD SEEM THAT THE INTERESTS OF THE COUNTY WOULD BE AS LIKELY TO BE SAFELY GUARDED

BY THEIR OWN REPRESENTATIVES AS BY ANY OTHER PROTECTION." (60 F. R., pp. 70, 71.)

Ashley v. *Board of Supervisors of Presque Isle County*, 60 Fed. Rep., 55–71.

It is true that in the case at bar the County of Saline was acting pursuant to a general law, and that the statute does not specifically say that municipal officers shall determine what outstanding debt is legal and binding and then submit the question of refunding it to a vote of the people, but it must be admitted that the only just inference is, that the legislature intended that in the case of counties, the boards of supervisors or commissioners should have the power of passing on the legality of outstanding bonds and indebtedness, and when the same was approved by a majority vote of the people, the just inference is that the county has determined to waive any defenses it might at that time have, and will not be permitted afterwards to raise the same question.

True it is that counties, under the Illinois act, were only empowered to refund binding, subsisting legal obligations, but this does not mean that the legality of outstanding indebtedness must be submitted to a court of competent jurisdiction for determination.

This is really the important point in this suit.

The counsel for the county in their brief before the Circuit Court of Appeals used the following language:

"For the express purpose of placing it beyond the "power of municipal authorities to bind the tax payers of "any municipality in the State of Illinois, the legislature "by apt and unmistakable language enacted in substance "and effect that no funding bonds should be valid in any "case whatsoever unless the same were issued for the ex-

"press purpose of taking up and retiring the 'binding "subsisting, legal obligations of such municipality' *thereby* "*reserving to the people of every county or other munici-* "*pality the undisputed and unquestionable right at all* "*times* to have a COURT OF COMPETENT JURISDICTION "DETERMINE THE QUESTION whether or not the indebted- "ness funded by such funding bonds was in fact the bind- "ing subsisting legal obligations of such county or other "municipality. If such indebtedness so funded was the "subsisting binding, legal indebtedness of such munici- "pality (*in the opinion of a court of competent jurisdic-* "*tion*) then it might be properly funded; if not, then the "act of funding, being unwarranted by law, was beyond "power, *ultra vires* and void."

On the correctness of this proposition the county substantially stakes its *whole case.*

As we have before stated we meet the proposition squarely and say that the only proper interpretation of the funding act of the legislature of Illinois under consideration is that it constitutes the COUNTY AUTHORITIES AND THE PEOPLE OP THE COUNTY VOTING ON THE QUESTION the TRIBUNAL which is TO DETERMINE WHAT ARE THE BINDING, SUBSISTING LEGAL OBLIGATIONS OF THE COUNTY which may be funded under said act.

The county cites no authorities in support of its contention, while, as to the correctness of our views we are able to refer the court to a decision of its own, *exactly in point*, to wit:

County of Jasper v. *Ballou*, 103 U. S., 745.

In this case, refunding bonds were under consideration which had been issued under the provisions of an act of the Illinois legislature as follows to-wit:

"SECTION 1. That in all cases where any county, city, "town, township, school district, or other municipal cor- "porations, have issued bonds or other evidences of in- "debtedness for money, on account of any subscription "to the capital stock of any railroad company, or on ac- "count of, or in aid of any public buildings or other "public improvements, or for any other purposes which "are NOW BINDING OR SUBSISTING LEGAL OBLIGATIONS "against any county, city, town, township, school dis- "trict, or other municipal corporations, and REMAINING "OUTSTANDING AND WHICH ARE PROPERLY AUUHORIZED "BY LAW, the proper authorities of any such county, city, "town, township, school district, or other municipal cor- "porations may, upon the surrender of any such bonds, "or other evidences of indebtedness, or any number there- "of, issue in place or in lieu thereof to the holders or "owners of the same, new bonds, etc. * * * "And such new bonds or other evidences of indebtedness, "so issued, shall show on their face that they are issued "under this act: Provided, that the issue of such new "bonds iu lieu of such indebtedness shall first be author- "ized by a vote of a majority of the legal voters of such "county, city, town, township, school district or other "municipal corporations, voting either at some annual or "special election of such municipal corporations."

Laws of Ill., 1875, p. 78.

The defense was that the *original bonds were void.* What we particularly wish to call attention to, at this time, is the language of the court in *interpreting the law* above quoted, which law the court will note is substantially in the same language as the funding law, under which the Saline County bonds in suit were issued, in that it only authorizes the funding of "*binding, subsisting, legal ob-*

"*ligations* * * * remaining outstanding and which "are *properly authorized by law.*"

Chief Justice WAITE, who wrote the opinion, said:

"In our opinion the county is estopped from setting "up the alleged invalidity of the original bonds as a de- "fense in this action. It is true the funding law only "authorized the funding of 'binding and subsisting legal "obligations properly authorized by law,' but no new "bonds could be issued in lieu of old ones except on a "vote of the people. All outstanding bonds were not to "be taken up in this way, but only such *as were recog-* "*nized by the people acting together in their political ca-* "*pacity at an election for that purpose, as binding and* "*subsisting legal obligations. After such a recognition* "*the corporate authorities could make the exchanges, but* "*not before.*" (P. 750.)

And again, in concluding:

"AS WAS VERY PROPERLY SAID BELOW BY THE LEARNED "CIRCUIT JUDGE: 'THERE MUST BE AN END OF THESE "CONTESTS AND DEFENSES SOME TIME OR OTHER.' THERE "MUST BE A TIME WHEN THE PEOPLE IN THEIR POLITICAL "CAPACITY ARE CONCLUDED BY THEIR CONTRACTS AS MUCH "AS INDIVIDUALS, AND WE THINK THAT WHERE THE PEO- "PLE OF THE COUNTY, AT AN ELECTION HELD ACCORDING "TO LAW, AUTHORIZE THEIR CORPORATE OR POLITICAL "REPRESENTATIVES TO TREAT CERTAIN OUTSTANDING "COUNTY OBLIGATIONS AS 'PROPERLY AUTHORIZED BY "LAW' FOR THE PURPOSE OF NEGOTIATING A SETTLEMENT "WITH THE HOLDERS, AND THE SETTLEMENT WHICH WAS "CONTEMPLATED HAS BEEN MADE, ALL CONTESTS AS TO THE "VALIDITY OF THE OBLIGATIONS MUST BE CONSIDERED AS "ENDED." (P. 752.)

County of Jasper v. *Ballou*, 103 U. S., 745.

From such language it appears to us conclusively that the only proper interpretation of the Illinois refunding law of 1865, as amended in 1877 and 1879 is that thereby the legislature conferred upon the corporate authorities of counties, and the people of counties, voting at a proper election, the *jurisdiction and power to determine* what were the *binding, subsisting legal obligations of such county*, which they wished to recognize and refund.

Counsel for the County will undoubtedly attempt to avoid the force of this *Jasper County* decision by claiming that the original bonds there in question were not void for want of power in their issue, but void because of an irregularity in the exercise of power. Under our view of the case it makes no difference what defect was claimed for the original issue. THE POINT IS THAT THIS COURT HAS DISTINCTLY AND EFFECTIVELY OVERRULED THE PROPOSITION ADVANCED BY THE COUNTY, THAT UNDER THE REFUNDING LAW IN QUESTION ONLY SUCH DEBTS COULD BE REFUNDED AS WERE FOUND TO BE VALID AND BINDING BY A COURT OF COMPETENT JURISDICTION. THE CORPORATE AUTHORITIES AND THE PEOPLE ARE HELD TO BE A SUFFICIENT TRIBUNAL TO DETERMINE THE VALIDITY OF THEIR OWN OBLIGATIONS.

THIRD. AFTER THE COUNTY, BY ITS PROPER CORPORATE AUTHORITIES, PURSUANT TO A VOTE OF THE PEOPLE, HAD PROCLAIMED ITS DECISION, AND PUBLICLY RECOGNIZED AND SAID TO THE WORLD THAT THE ORIGINAL BONDS WERE OUTSTANDING, BINDING, SUBSISTING, LEGAL OBLIGATIONS AGAINST IT, AND HAD ISSUED REFUNDING BONDS IN THEIR PLACE, IT IS ESTOPPED FULLY AND COMPLETELY FROM RAISING ANY QUESTION AS TO THE VALIDITY OF THE ORIGINAL BONDS, OR WANT OF CONSIDERATION FOR THE ISSUE OF THE REFUNDING BONDS.

A case lately decided by the Supreme Court of North Dakota is in point. It is entitled *Flagg* v. *School District No. 70, Barnes County*, opinion filed March 9, 1894, and reported in 58 N.W. Rep., 499. The point involved was the validity of certain funding bonds issued under a special act of the territory, not found in the printed volumes, and approved March 12, 1885. The material sections are quoted in the opinion. We quote the substance of section 5:

"SEC. 5. No bond shall be issued under this act until the question of issuing the same shall be first submitted to a vote of the district at a school meeting called for that purpose. * * * A majority of the legal voters present and voting at such meeting shall first appoint a committee of three * * * to audit and settle the indebtedness of the district. Said committee shall at once cause notice to be given of their appointment, and shall in said notice set a time in which the outstanding indebtedness shall be presented to them * * * and shall also set forth a time when the committee will make a full report of their duties to the electors of such district, whereupon the electors shall meet at such time and place to receive said report and submit the question of the issuing of bonds to provide for the payment of the indebtedness as audited and settled, and the auditing or settling by said committee shall not be, in any manner, construed to be binding on said district, or be construed as an admission of the legality of

any claim or alleged claim against said district, and no bonds shall be issued until the claims for which they are issued shall be delivered up and canceled, etc."

The court held that the funding bonds were not negotiable, and that no equities were interposed for the benefit of the holder who was suing on the same as a *bona fide* purchaser for value before maturity, and consequently the decision was based on the law which applied to original purchasers, or to holders of the evidences of the outstanding floating debt who presented the same in exchange and payment for refunding bonds. One of the defenses made by the district was, that a portion of the original floating debt was illegal and void, and consequently an exchange of the evidences of such illegal or void indebtedness for the funding bonds issued, would be an exchange *without consideration*, and would make the funding bonds void. Upon this proposition of law the court was divided in its opinion, but a majority of the justices said:

"A provision in the statutes declared that the auditing and settling by the committee should not be construed to be binding on the district, or as an admission of the legality of any claim or alleged claim. Upon this provision my brother Corliss builds an able argument to show that where bonds where issued and delivered in exchange for such claims, a recovery on the bonds may be defeated by showing that such claims were in fact invalid, and hence no consideration was given for the bonds. I fully agree with him that the action of the committee alone could not bind the district, or estop it from disputing the validity of the claim; but I entirely disagree with him as to the result that follows from that circumstance, when bonds have in fact been voted and issued, and exchanged for such claims. * * * *If, after the tribunal authorized by law and appointed by the district has declared certain claims valid, and after the district, with full knowledge of all the facts, has ratified the action of that*

tribunal by voting to issue bonds for the payment of the claims thus allowed, and after the bonds have been in fact issued and exchanged for the allowed claims, if then we permit the district, when sued on the bonds, to declare them worthless because the claim for which they were exexchanged was invalid, then we may well ask, why was the act ever passed? Why this expensive and protracted preparation for the enactment of so light a farce? An examination of the statute will show that it expressly authorizes and contemplates a direct exchange of the bonds for the allowed claims. True, the district is not limited to that. It may sell for cash. But the exchange is expressly authorized. Does it not involve a contradiction to say, that when the amount of bonds and the purpose of their issue have been fixed as the law directs, and when the bonds have been voted and issued as the law directs, and when they have been exchanged for the exact consideration that the law directs, nevertheless the bonds are without consideration and worthless. The certificate (certificate of the county clerk's registry of bonds) does not foreclose the question of consideration in this case more than in any other, but it establishes certain facts, to wit: that the committee have audited and settled certain claims; that the district had, by vote, ratified that settlement, by directing the issuance of bonds to pay such claims as audited and settled; that the bonds had issued, and that the original claims (presumably resting in warrants), had been delivered up and canceled. Under these circumstances when the claim owner receives the promised bonds in exchange for his surrendered and canceled claim, I contend that the district is estopped by every principle of the law of estoppel from saying that such bonds are without consideration. * * * If they (school board), sold them (bonds), for cash as the law directs, or if they exchanged them for surrendered claims as the law directs, the question of want of consideration cannot be successfully raised. But if the bonds were given away, or, if through fraud or favoritism, they were sold for less than their value, or less than the statute directs, such facts might be shown to establish want of consideration." (58 N. W. Rep., 511, 512.)

We quote this language of the chief justice of the Supreme Court of North Dakota with the full appreciation

of the fact that the decision of such a tribunal would not be accepted by this court, possibly, with the same force as if it emanated from one of the appellate federal tribunals, but we also quote it with the full belief that this court will quickly discern the merits of any legal proposition placed before it.

It is not claimed in this suit that the Funding bonds were exchanged for other than *the identical bonds* which the people voted to take up and cancel.

The exact object was attained which the county, by its corporate authorities, planned and carried out with the support of its people. This being true, we undertake to say the county cannot now claim that it received *no consideration* for its funding bonds. The exact object was attained as fully and effectively *as if the new bonds had been sold for cash and the proceeds applied to the payment of the old bonds in money.* And it will be observed that the *only way* the new bonds could be legally used to cancel the old ones was by an *exchange*, according to the opinion of this court in *Doon Township* v. *Cummins*, 142 U.S., 336, and an investor contemplating the purchase of the new issue would have been compelled to have first invested his money in the old bonds, and then offered them in exchange for the new.

Let us now look at the facts and see the position of the county in 1883, when the refunding proposition was contemplated.

Two issues of bonds, aggregating $100,000, were outstanding. The original bonds issued to the St. Louis and South Eastern Railway Company bore date January 1, 1872, aggregated $25,000, and bore interest at 8 per cent., payable semi-annually, and matured twenty years

after date, with the right reserved to pay the same at any time after five years from their date. The bonds to the amount of $75,000, payable to the Belleville and Eldorado Railroad Company, bore date March 9, 1877, with interest at the rate of 8%, payable semi-annually, and matured twenty years after January 1. 1873, but payable at any time after the expiration of five years from January 1, 1873, at the option of the county. From the respective dates of the issuance of these two blocks of bonds up to the year 1883, the county of Saline had been called upon to pay eight per cent. interest semi-annually, and had paid it. If the bonds ran their full time the county would be called upon to pay eight per cent. on the St. Louis and South Eastern Railway bonds, until the year 1892, and on the Belleville and Eldorado bonds until January 1, 1893, but, in both cases, the county reserved the option to pay the bonds five years after date. (Ctf., p. 2.)

The county could either contest the legality of these bonds and endeavor to shake off the entire responsibility of paying further interest or principal, or could take advantage of the provisions of the Refunding Act of 1865, as amended in 1877 and 1879, and call in the old bonds and exchange them for new ones bearing a less rate of interest and extending the time of compulsory payment of the principal. The first course meant repudiation and destruction of the credit of the county. The second course meant the preservation of credit and a reduction in interest charge advantageous to the county.

The original bonds were in the hands of *bona fide* holders and if a contest was made on the legality it was known that the litigation would have to be carried on in the Federal

courts. What would be their chances of successful repudiation? The United States Supreme Court had handed down several decisions on similar bonds.

Let us consider first their chances in the case of the St. Louis and South Eastern issue of $25,000, dated January 1, 1872. The only defect that could be discovered in this record was that the railroad was not constructed on the line specified in the call for the election held October 9, 1869, which election was held in accordance with the act of April 16, 1869, authorizing a vote on subscriptions to the capital stock of railroad companies upon certain conditions.

A reading of the opinions in *Brooklyn* v *Insurance Co.*, 99 U. S., 362, and *Insurance Co.* v. *Bruce*, 105 U. S., 328, would have disclosed to them that there was no defense open on this ground against the *bona fide* holder for value of the St. Louis and South Eastern bonds.

Afterwards in *Oregon* v. *Jennings*, 119 U. S., 74, this court further strengthened the decisions above quoted, which were in existence in 1883.

Were the chances for success any better in the case of the Belleville and Eldorado Railroad bonds?

They were issued under date of March 9, 1877, and in the following form;

"UNITED STATES OF AMERICA, SALINE COUNTY BOND.

County of Saline, – State of Illinois.

KNOW ALL MEN BY THESE PRESENTS: That the County of Saline in the State of Illinois, acknowledges itself to be indebted to the Belleville and Eldorado Railroad Company, or bearer, in the sum of one thousand dollars, which sum

the said county, for value received promises to pay said company, or bearer, in the City and State of New York, twenty years after the 1st day of January 1873, (payable at any time after five years, and before the bond becomes due, at the option of said County of Saline) with interest thereon from and after first day of January 1873, at the rate of eight per cent, per annum, payable semi-annually, on the first day of January and July of each year on the presentation and surrender, at the place in the said City of New York where the treasurer of the State of Illinois pays the interest and debt of said State, of the coupons hereto attached as they severally become due.

This bond is one of seventy-five, of like tenor and amount, of the same issue, and it is issued pursuant to an order of the board of county commissioners of said county, authorized by a majority of the legal votes cast at an election held in said county, pursuant to law, on the 9th day of October, 1869.

This bond is also issued under the provisions of an act to incorporate the Belleville and Eldorado Railroad Company approved February 22, 1861, ALSO UNDER THE PROVISIONS OF AN ACT TO FUND AND PROVIDE FOR THE PAYMENT OF THE RAILROAD DEBTS OF COUNTIES, TOWNSHIPS, CITIES AND TOWNS APPROVED APRIL 16th, 1869, and is in part payment of a subscription to the capital stock of the Belleville and Eldorado Railroad Company, in the total sum of seventy-five thousand dollars.

In testimony whereof, the said County of Saline has executed this bond, by the chairman of the board of county commissioners, under the order of the board of county commissioners of said county, signing his name hereto, and by the clerk of said Board under the order

hereof, attesting the same and affixing hereto the seal of the County Court of said county.

This done at the office of the clerk of said Board, this ..... day of ....., A. D.

.....

Chairman of the Board of County Commissioners of Saline County, State of Illinois.

.....

Clerk of the Board of County Commissioners of Saline County, State of Illinois.."

(Record Cir. Ct. Appeals, 106, 107.)

The said bonds were registered in the office of the auditor of public accounts of the State of Illinois, on the 19th day of April, 1877, pursuant to the provisions of an act of the legislature, of the State of Illinois, entitled: "An "act to fund and provide for paying the R. R. debts of "counties, townships, cities and towns," in force April 16, 1869. (Record Cir. Ct. Appeals, 108.)

The only defense available against these bonds was that the railroad had not been commenced within one year and completed within three years from the date of subscription (January 15, 1870) to its capital stock.

Here again the decision of the United States Supreme Court in *Insurance Co.* v. *Bruce*, 105 U. S., 328, was applicable. In that case the decision of the Illinois Supreme Court in *Town of Eagle* v. *Kohn*, 84 Ill., 292, was commented upon and distinguished in the following language by Mr. Justice HARLAN:

"It does not appear from the report of the latter case "(*Eagle* v. *Kohn*) that the town had by the recitals in its "bonds estopped itself from asserting, as against a *bona* "*fide* holder, the non-performance of conditions imposed

"by popular vote. Had the town of Eagle represented, in "express words, upon the face of the bonds, that no con- "ditions whatever were prescribed by the people or that "the subscription was unconditional, the State Court "would not, we suppose, adjudge that the town as against "a *bona fide* holder, could take shelter behind the statute- "tory provision in question. In the present case the "Town of Bruce did not make in express terms, a repre- "sentation of that character. But, in effect, by the re- "citals in its bonds, it did represent to the public "that the bonds were issued in all respects in conformity "to law, and that nothing remained to be done which was "essential to its liability thereon. The town having "power, under the statute, to make an unconditional "subscription and to issue and deliver its bonds in ad- "vance of the construction of the road what was said in "*Brooklyn* v. *Ins. Co.*, (99 U. S., 362,) may be re- "peated here. 'It is now too late for the town to claim "exemption as against *bona fide* purchasers, upon the "ground that the railroad company disregarded its "promise to construct the road, or upon the ground that "its own officers delivered the bonds in violation of special "conditions, of which the purchasers had no knowledge "or notice, either from the statute or otherwise.'"

Insurance Co. v. *Bruce*, 105 U. S., 328.

The recital in the Town of Bruce bonds which was held sufficient to estop the town from setting up *Town of Eagle* v. *Kohn*, *supra*, as a defense, was "*issued by vir- "tue of the law of the State of Illinois, entitled, 'An "Act to incorporate the Kankakee and Illinois River "Railroad Company,' approved April 15, 1869, and "'An Act to fund and provide for paying railroad debts*

"*of counties, townships, cities and towns, in force April* "*16, 1869.*' "

The recital in the Belleville and Eldorado Railroad bonds was as follows:

"*This bond is issued under the provisions of an act to* "*incorporate the Belleville and Eldorado Railroad Com-* "*pany, approved February* 22, 1861; ALSO UNDER THE "PROVISIONS OF AN ACT TO FUND AND PROVIDE FOR THE "PAYMENT OF THE RAILROAD DEBTS OF COUNTIES, TOWN- "SHIPS, CITIES AND TOWNS, APPROVED APRIL 16TH, "1869."

Under these recitals the county well knew under the decision above quoted that the Belleville and Eldorado Railroad bonds would be held valid and binding in the hands of *bona fide* holders for value, and we think we are correct in stating that the decision in the Bruce case stands to-day in every way applicable to these Belleville and Eldorado Railroad bonds, and that their validity has not been affected by the decision of *German Savings Bank* v. *Franklin County*, 128 U. S., 526.

As before stated the Oregon case in 119 U. S. strengthened the Bruce case. The distinguishing feature in both of these cases is that they hold that *where Illinois bonds issued under the Act of April 16, 1869*, RECITE ON THEIR FACE A COMPLIANCE WITH SAID ACT, *it matters not whether the conditions prescribed in the vote have been complied with or not, such recital being sufficient to estop the municipality issuing the same from setting up this defense.*

In the Franklin County case the court particularly states that the reason the Oregon and Bruce cases are not applicable is because "*the recital in the bonds does not*

contain any reference to the Act of April 16, 1869, or certify any compliance with the provisions of that act." If such a recital had been in the Franklin County bonds it would appear that the decision might have been very different, and certainly *it cannot be contended that this case overrules the Bruce and Oregon cases.* But if it be granted for the sake of argument that such is the case this decision made in December 1888 could not have been before the officers of Saline County in 1883 when the funding proposition was under consideration. The Bruce case was then the law of the Federal courts, and under it the validity of the Belleville and Eldorado railroad bonds was beyond question.

Upon the decisions of the Supreme Court of Illinois tending to hold to the proposition that all railroad aid bonds issued since the date of the adoption of the constitution of 1870 are *prima facie* void. It is unnecessary to make further comment than to call the attention of this court to the last decision of the Illinois court on this proposition, which recognizes the importance of recitals on the face of the bonds in the following language:

"The bond given in evidence by agreement of the par-
"ties showed that it was issued Nov. 1, 1870—that is
"after the adoption of the constitution—but it also
"recited that it was duly authorized by a majority of the
"qualified voters of the town at an election duly held for
"that purpose on the 17th day of June, 1870, and was
"issued in part payment of the town's subscription for
"$30,000 of the capital stock of the company made by
"authority of certain recited acts of the legislature. It
"also showed that it had been duly registered in the
"office of the auditor of public accounts as provided by

"the statute. Thus it will be seen that the same instru-
"ment of evidence, viz., the sample bond, which was
"relied upon to raise the presumption of illegality,
"because issued after the adoption of the constitution of
"1870, furnished at the same time evidence to rebut such
"presumption by tending to show that its issue was, to
"use the language of the constitution, 'authorized under
"existing laws, by a vote of the people of such munici-
"pality prior to such adoption.'" (39 N. E. 33.)

Hutchinson v. *Self*, 39 N. E. Rep., 27.

This decision was rendered *November 26, 1894*, and was consequently not before the Court of Appeals when this case was submitted in October of 1894.

The Belleville and Eldorado railroad bonds in question contained the following recitals:

"This bond is * * * authorized by a majority of
"the legal votes cast at an election held in said county,
"pursuant to law, *on the 9th day of October, 1869.*

"This bond is also issued under the provisions of an
"act to incorporate the Belleville and Eldorado Railroad
"Company, approved February 22, 1861; also under
"the provisions of an act to fund and provide for the pay-
"ment of the railroad debts of counties, townships, cities
"and towns, approved April 16, 1869, and is in part pay-
"ment of a subscription to the capital stock of the Belle-
"ville and Eldorado Railroad Company, in the total sum
"of $75,000."

The bonds were registered by the state auditor and consequently are, in all respects, within the doctrine of *Hutchinson* v. *Self*, just quoted.

We have thus reviewed the law applicable to the original bonds if the county chose to repudiate them in 1883,

but it did not take this course. With the full facts before it, it decided to refund the old bonds and maintain its credit. In taking this action the decision in *Jasper County* v *Ballou*, 103 U. S., 745, decided at the October term, 1880, was in full force. By the terms of the funding law so interpreted, the county, by its corporate authorities, and its people voting at a proper election were given the powers of a tribunal to determine what indebtedness of the county was a binding and subsisting legal indebtedness to be funded. They then proceeded *on their own motion* to carry out the provisions of the refunding act of 1865 as amended in 1879, and took the following steps:

First. The county board of Commissioners in session September 4, 1883, received a petition signed by fifteen legal voters and residents of the county praying that the question of issuing refunding bonds be submitted to a vote of the people, said refunding bonds to be used "for pay-"ing and redeeming the following described bonds of "said county, and which bonds are the binding, subsist-"ing legal obligations of said county, that is":

1st. $25,000 bonds issued to the St, L. & S. E. Rwy. Co.

3rd. $75,000 bonds issued to the B. & E. R. R. Co.

(Rec. Ct. Ct. Appeals, 113, 114.

Second. The county board "having fully consid-"ered" said petition and "being now fully advised of "and in said premises," ordered that the question be submitted to a vote of the people of issuing funding bonds "for the purpose of paying and redeeming the following "described bonds of said county, and which bonds are

"the binding, subsisting legal obligations of said "county," etc.

(Rec. Ct. Ct. Appeals, 115.)

Third. The people ratified this determination by a majority of 1,030 votes out of a total vote of 1,334 at an election duly called and held in all respects in accordance with law on November 6, 1883.

(Rec. Ct. Ct. Appeals, 117.)

Fourth. Refunding bonds were issued containing the following recital:

"This bond is one of a series of 195 of like tenor is- "sued for the purpose of funding and retiring certain "binding, subsisting legal obligations of said county, "which remain outstanding and unpaid."

Fifth. The refunding bonds were duly registered by the auditor of public accounts under the following provision of the law:

"No bonds issued under this act shall be entitled to "registration in the office of the state auditor until a "*sworn certificate* shall have been filed with him showing "that *all the requirements of this act* have been fully "complied with in their issue. In the case of county "bonds, such affidavits shall be made by the chairman "of county board."

Laws, 1879, p. 232.

Sixth. The refunding bonds to the amount of $100,000, bearing interest *at six per cent, payable annually*, were exchanged *at the solicitation of the county* for the old bonds bearing *eight per cent interest payable semi-annually*, which had been determined by the county acting through its proper corporate authorities—and pursuant to a vote of the people, to be its legal binding and subsisting obligations.

The refunding proposition originated with the county for its own advantage. The holders of the original bonds in no way influenced its action or course. At the solicitation of the county they exchanged their old bonds for the new. (Ctf., 7.)

Can it be that all of these acts and all of these facts have no meaning, and that the county can now successfully attack its refunding bonds on the sole grounds that it was without power to issue the original bonds which it called in and canceled for its own advantage in 1883?

Can it be that the County of Saline *will be permitted* to now urge the same, defenses against the original bonds, which it could have urged in 1883?

We think not, and in the Jasper County case the exact law applicable is laid down in no uncertain language.

"In our opinion the county is estopped from setting up the alleged invalidity of the original bonds as a defense in this action. It is true the funding law only authorized the funding of 'binding and subsisting legal obligations' 'properly authorized by law,' but no new bonds could be issued in lieu of old ones except on a vote of the people. All outstanding bonds were not to be taken up in this way, but only such as were recognized by the people acting together at their political capacity at an election for that purpose, as binding and subsisting legal obligations. After such recognition the corporate authorities could make the exchanges, but not before.

Whether these bonds (original bonds) *were valid was*, as far as any direct decisions were concerned, *an open question*. Under these circumstances the question was directly put to the people of the county, in a manner authorized by law, whether they would recognize these bonds as 'binding and subsisting legal obligations,' and issue in lieu of them other bonds having twenty years to run and bearing seven per cent. interest instead of ten; and they, by their vote, said they would. There is no complaint of any illegality in this election, or of fraud or im-

position. So far as the record shows, the proposition to fund went from the county authorities to the bondholders, and not from the bondholders to the county. The facts were as well known to one party as to the other. If the people intended to rely on their defenses to the old bonds, then was the time for them to speak and by their vote say, they would not recognize them as binding obligations. By voting the other way, they, in effect, accepted them as legal and subsisting for the purposes of the proposed extension of time at reduced interest, and said to the holders, if their proposition was accepted, no question of illegality would be raised. Their offer having been accepted, they are now estopped from insisting upon an irregularity which they have by their votes voluntarily waived with a full knowledge of the fact. The case is clearly as we think, within the principle acted on by the Supreme Court of the state in *Pres. & Trustees of Keithsburg* v. *Frick*, 34 Ill., 405. AS WAS VERY PROPERLY SAID BELOW BY THE LEARNED CIRCUIT JUDGE: 'THERE MUST BE AN END OF THESE CONTESTS AND DEFENSES SOME TIME OR OTHER.' THERE MUST BE A TIME WHEN THE PEOPLE IN THEIR POLITICAL CAPACITY ARE CONCLUDED BY THEIR CONTRACTS AS MUCH AS INDIVIDUALS, AND WE THINK THAT WHERE THE PEOPLE OF THE COUNTY, AT AN ELECTION HELD ACCORDING TO LAW, AUTHORIZE THEIR CORPORATE OR POLITICAL REPRESENTATIVES TO TREAT CERTAIN OUTSTANDING COUNTY OBLIGATIONS AS 'PROPERLY AUTHORIZED BY LAW' FOR THE PURPOSE OF NEGOTIATING A SETTLEMENT WITH THE HOLDERS, AND THE SETTLEMENT WHICH WAS CONTEMPLATED HAS BEEN MADE, ALL CONTESTS AS TO THE VALIDITY OF THE OBLIGATIONS MUST BE CONSIDERED AS ENDED."

County of Jasper v. *Ballou*, 103 U. S., 745.

Second Question.

ARE THE FUNDING BONDS SO ISSUED BY THE COUNTY OF SALINE VALID AND BINDING OBLIGATIONS IN THE HANDS OF A BONA FIDE HOLDER FOR VALUE BEFORE MATURITY?

The funding bonds contained the following recitals:

"This bond is one of a series of 195 of like tenor, "issued for the purpose of FUNDING AND RETIRING CER- "TAIN BINDING, SUBSISTING LEGAL OBLIGATIONS OF SAID "COUNTY, WHICH REMAIN OUTSTANDING AND UNPAID, un- "der the provisions of an act of the General Assembly of "the State of Illinois, entitled 'An Act to enable counties, "cities, towns, townships, school districts and other "municipal corporations to fund, retire and purchase "their outstanding bonds and other evidences of indebt- "edness,. and provide for the registration of new "bonds or other evidences of indebtedness,' ap- "proved February 13, 1865, and acts amendatory "thereto, approved April 27, 1877, and June 4, "1879, and in pursuance of a vote of the majority of the "legal voters of said county, voting at an election legally "called under said act the 6th of November, 1883.

"We hereby certify that all requirements of said acts "have been fully complied with in the issue hereof."

It seems so plain that under these recitals the funding bonds were valid in the hands of *bona fide* holders for value before maturity, that discussion of the question or reference to the long line of opinions delivered by this court, commencing with *Commissioners* v. *Aspinwall*, 21 How., 539, down to *Cairo* v. *Zane*, 149 U. S., 122, is unnecessary. The rule was stated by Mr. Justice Woods in the following language:

"This court has again and again decided that if a "municipal corporation has lawful power to issue bonds "or other negotiable securities, dependent only upon the "adoption of certain preliminary proceedings, such as a "popular election of the constituent body, the holder in "good faith has the right to assume that such preliminary "proceedings have taken place, if the fact be certified on "the face of the bonds by the authorities whose primary "duty it is to ascertain it."

Pana v. *Bowler*, 107 U. S., 529.

So in the case of these refunding bonds a *bona fide* holder would be called upon to look at the statutory power of Saline County to issue these bonds. By reference to the act recited in the bonds he would find express power for the issue of just such bonds.

Laws of Ill., 1879, p. 229 *et seq.*

"The bonds recite that they were issued for the pur- "pose of funding and retiring certain *binding, subsisting* "*legal obligations of the county which remain outstanding* "*and unpaid.*"

If such a recital by the municipal officers is not sufficient to protect the *bona fide* holder we cannot imagine a case where the long established doctrine of this court will protect such a holder.

But in addition to these recitals the *bona fide* holder finds that his bond has been registered by the state auditor in accordance with the law specified on the face of the bonds. A glance at the law governing such registration shows the following provision:

"SEC. 4. * * * No bonds issued under this act "shall be entitled to registration in the office of the state

"auditor, until a sworn certificate shall have been filed "with him showing that all the requirements of this act "have been fully complied with, in their issue. In the "case of county bonds, such affidavits shall be made by "the chairman of the county board."

Laws of Ill., 1879, p. 232.

Registration by the auditor of Illinois of bonds issued under the act of April 16, 1869, was held to be of some protection in *Cairo* v. *Zane*, 149 U. S. 122, where the court said:

"Where the law of the state provides for registry of "municipal bonds and a certificate thereof, such certifi- "cate should be held as sufficient evidence to a purchaser "of the existence of those facts upon which alone bonds "can be registered. If the plaintiff in this case, not "resting upon the mere terms of the certificate, had ex- "amined the records of the auditor's office, he would have "found there, the certificate under oath, of the mayor of "the city, of the election, its date and facts necessary to "warrant the issue of the bonds, such officer being the "one named in the statute as the one to furnish to the "auditor the evidence necessary to justify the registry. "Can it be that a purchaser, with this evidence before "him, is not protected by the statement upon the face "of the bonds that they were issued in part payment of a "*subscription?* Is it his duty to examine all the pro- "ceedings, to see whether that which was a subscription "in the first instance was called a subscription all the "way through, and was named as a *subscription* in the "bonds, had not been transformed by some action of the "city council into a *donation*?

Cairo v. *Zane*, 149 U. S., 141–2.

Lewis v. *Commissioners*, 105 U. S. 739.,

So in the bonds in question, Was the purchaser compelled to look all the way through the records to see whether the indebtedness which they were issued to fund was a "binding, subsisting legal obligation?" The board decided such was the case. The affidavit to support registration showed *the law had been fully complied with. There was nothing in the recitals which intimated that the original debt was a railroad aid debt.* The bonds were in exactly the same form as if the original debt had been incurred for some strictly corporate purpose, such as building a jail or court house.

We submit that these Saline County bonds come directly under the decisions of this court in

Hackett v. *Ottawa*, 99 U. S., 86, and
Ottawa v. *National Bank*, 105 U. S., 343,

which have never been overruled and which stand unquestioned as the law to-day. It is unnecessary to give a long list of cases in which they have been cited and approved.

The defense of the county to the effect of these recitals, as we understand it, is:

1st. The purchaser was compelled to look at the entire record of the county board in calling the election to vote the funding bonds on November 6, 1883.

2d. From such records of the county board the purchaser would find that the original debt which was being funded was evidenced by bonds theretofore issued to the St. Louis and South-eastern Railway Company and to the Bellville and Eldorado Railroad Company.

3d. Notwithstanding the county records recited that such original bonds were the binding, subsisting legal obligations of the county, which the people had voted to

refund, the purchaser of the refunding bonds was compelled to go back further and examine the records of the county preliminary to the issue of the original bonds, and was there compelled to note the fact that the Bellville and Eldorado Railroad was not commenced or completed within the time specified in the vote of October 9, 1869, and that the St. Louis and South-eastern Railway was not built on the route specified in such vote.

4th. Having discovered these facts by going back to the records of 1869 the purchaser was compelled to know that under the decision of *Eagle* v. *Kohn*, 84 Ill., 292, the original bonds were void, *regardless of their recitals and regardless of the decisions of this court* in *Insurance Co.* v. *Bruce*, 105 U. S., 328; *Brooklyn* v. *Insurance Co.*, 99 U. S., 362, and *Oregon* v. *Jennings*, 119 U. S., 74.

5th. Having thus been notified that the original bonds were issued without power and were void, he was bound to know that they were not such bonds as could be refunded under the refunding act of 1865 as amended in 1879, which authorized only the funding of such indebtedness as was a binding, subsisting and legal indebtedness of the county, and consequently was put on notice that the county had *no power* to issue the refunding bonds.

Absurd as it is this is exactly the defense that was urged before the Circuit Court of Appeals to defeat these refunding bonds. In our brief on the first question we think we have fully answered this defense by establishing beyond controversy, by the authority of *Jasper County* v. *Ballou*, 103 U. S., 745, that the Illinois funding act of 1865, as amended by the act of 1879, *gave the jurisdiction and the power to Saline County, acting through its corporate authorities and its people, voting at a proper elec-*

tion to judge and determine for itself what were its binding, subsisting legal obligations which it desired to refund. And this whole elaborate defense falls to the ground wnen they fail to establish their proposition that the refunding act of 1865 as amended in 1879 permits only the refunding of such debts as are found by a court of competent jurisdiction to be binding, subsisting legal obligations. As we have before stated, they have staked their whole case on this proposition which they cannot sustain.

They seek to term the refunding process as merely a *ratifying* one, and below cited authorities on the proposition that a void act cannot be ratified. This is not the question here. The action of the county in refunding its old bonds was *much more than a ratification. It was a trial.* The facts were before the county authorities and the people; they had jurisdiction to try the validity of the old bonds; their verdict was they were its binding, subsisting legal obligations, and cannot now be heard to assert the contrary.

The county cites no federal authorities except the Franklin County case and *Post* v. *Pulaski County*, 9 U. S. App., 1, *and wishes to absolutely disregard the whole refunding process.* It is apparent that the case of *Town of Eagle* v. *Kohn*, 84 Ill., 292, was before the county in 1883, when the refunding took place, and it seems that no reliance was placed upon it until after the Franklin County case was decided. The date of the repudiation of the funding bonds, December 30, 1889, when compared with the date of the Franklin County decision, December 10, 1888, makes manifest the cause of the repudiation and the desire of the county to escape the results their own action in 1883. But we have seen that the Franklin County

case would not have applied to the old bonds of Saline County, even if the funding had not taken place and the law as to estoppels by recitals laid down in *Post* v. *Pulaski County* was distinctly overruled in *Cairo* v. *Zane*, 149 U. S., 122.

We have already referred the county to the decision of the Circuit Court of Appeals for the Sixth Circuit in the case of *Ashley* v. *Board, etc., Presque Isle County* —— 60 Fed. Rep. 55, in which the court held a county which was sued on refunding bonds was estopped from setting up the invalidity of the old bonds as a defense.

The same court in another case, decided November 23, 1893, say :

"Power was conferred by the act upon the common coun-
"cil to issue new bonds to take up bonds falling due. The
"question as to whether there were any such bonds *is re-*
"*ferred to the council.* The old bonds on the facts
"found by the Circuit Court were, at the least 'colorable
"obligations." The council determined to issue new
"bonds and take them up. It seems to us that upon
"these circumstances it did not devolve upon the pur-
"chaser of the new bonds to look into the validity of
"the old bonds. He might well rely upon the represen-
"tion made to him on the face of the bond as to the ex-
"istence of 'old bonds falling due.'

"This case comes under the class of cases of which *Town*
"*of Coloma* v. *Eaves*, 92 U. S., 484; *Hackett* v. *Ottawa*,
"99 U. S., 86, and *Chaffee Co.* v. *Potter*, 142 U. S.,
"355, are examples. The observation of Mr. Justice
"Campbell in *Zabriskie* v. *Railroad Co.*, 23 How., 381,
"and repeated by Mr. Justice Clifford in *Bissell* v. *City*
"*of Jeffersonville*, 24 How., is applicable here. It is
"this :

"'A corporation, quite as much as an individual, is "held to a careful adherence to truth in their dealings with "mankind, and cannot by their representations or silence, "involve others in onerous engagements and thus defeat "the calculations and claims their own conduct had super-"induced.'

"The recitals in the new bonds, as to the fact of 'old "bonds falling due' and that the new bonds were issued to "take up the old, would well lull an intending purchaser "into security. The defense it might have made against "the old bonds it elected not to make, it should not now "be permitted to set up as against a *bona fide* holder of its "refunding bonds."

Cadillac v. *Woonsocket Inst. for Savings*, 58 Fed. Rep., 935.

So in these Saline County refunding bonds, the county recited on their face that they were issued to refund "*binding, subsisting, legal obligations* of said county, "which remain outstanding and unpaid."

The intending purchaser had a right to rely upon their recitals and was by no rules or decisions of this court required to look further.

Little Rock v. *Merchants Nat. Bank*, 98 U. S., 308.

Chandler v. *Attica*, 18 Fed. Rep., 299.

Hill v. *Peekskill Sav. Bank*, 101 N. Y., 490.

Meyer v. *Brown*, 65 Cal., 590.

Risley v. *Howell*, 64 Fed. Rep., 453.

National Life Ins. Co. v. *Board of Education*, 62 Fed. Rep., 778, and cases therein cited.

Third Question.

IF THE COURT SHOULD BE OF OPINION THAT THE FUNDING BONDS ARE INVALID, WOULD IT BE COMPETENT FOR THE COURT IN THIS CAUSE, WHICH IS A SUIT IN EQUITY, INSTITUTED BY THE COUNTY OF SALINE TO RESTRAIN OFFICERS OF THE LAW FROM LEVYING AND COLLECTING A TAX AS REQUIRED BY LAW TO PAY THE INTEREST UPON THE FUNDING BONDS TO GRANT THE RELIEF ASKED, UPON THE CONDITION THAT THE COUNTY OF SALINE PAY TO THE HOLDERS THE AMOUNT OF THE VALID BONDS ISSUED TO THE ST. LOUIS AND SOUTHEASTERN RAILWAY COMPANY WHICH WERE EXCHANGED FOR THE FUNDING BONDS?

On this proposition it seems unnecessary to make any argument. In the first place it seems to us that the answer to the first two questions will be such that this court will not be called upon to consider this question. In the second place it is addressed solely to the conscience of the court for their determination of what would be an equitable decree, under certain circumstances.

This case is of the greatest importance to municipalities in general, and to every investor in municipal securities. If the first two questions asked by the Court of Appeals are answered in the negative, it will surely take all refunding bonds out of the pale of desirable investments. *A new rule will have been established*, and thenceforth no county or city would be able to sell fund-

ing or refunding bonds for any other purpose than to satisfy the judgment of a court of competent jurisdiction. All outstanding bonds or warrants would have to be merged into such a judgment before investors could afford to buy bonds issued to refund or fund them. Such a rule would justly alarm the holders of thousands of municipal funding or refunding bonds, aggregating in amount many millions of dollars, and would, at the same time, seriously interfere with the financial affairs of many municipalities, which now contemplate extending the time of payment of their outstanding obligations on more favorable terms, and whose people and corporate authorities now justly deem themselves duly empowered and perfectly competent to determine what obligations they wish to recognize and refund, and what not.

Respectfully submitted in behalf of the Society for Savings, D. B. Wesson and William Burgoyne.

THOMAS C. MATHER,
Their Solicitor.

JAMES A. CONNOLLY,
JOHN C. MATHIS,
Of Counsel.

APPENDIX.

First Five Sections of Illinois Funding Bond Act,

Approved Feby. 13, 1865. As amended by acts, approved April 27, 1877, and June 4, 1879.

Laws of Ill., 1879, —— 229.

2 Starr & Curtis Rev. Stat., Chap. 113, p. 1,877.

§ 1. That in all cases where any county, city, town, township, school district, or other municipal corporation has issued bonds or other evidences of indebtedness for money, or has contracted debts, which are the binding, subsisting legal obligations of such county, city, town, township, school district, or other municipal corporation, and the same, or any portion thereof, remain outstanding and unpaid, it shall be lawful for the proper corporate authorities of any such county, city, town, township, school district, or other municipal corporation, upon the surrender of any such bonds or other evidences of indebtedness, or any number or portion thereof, to issue, in lieu or place thereof, to the owners or holders of the same, new bonds prepared as hereinafter directed, and for such amounts, upon such time not exceeding twenty years, payable at such place, and bearing such rate of interest, not exceeding seven per centum per annum, as may be agreed upon with the owners or holders of such outstanding bonds or other evidences of indebtedness: *Provided*, that bonds issued under this act, to mature within five years from their date, may bear interest not to exceed eight per cent. per annum. And it shall also be lawful for the proper corporate authorities of any such county, city, town, township, school district, or other municipal corporation, to cause to be thus issued such new bonds, and sell the same, to raise money to purchase or retire any or all of such outstanding bonds or other evidences of indebtedness; the proceeds of the sales of such new bonds to be expended, under the direction of the corporate authorities aforesaid, in the purchase or retiring of the outstanding

bonds or other evidences of indebtedness of such county, city, town, township, school district, or other municipal corporation, and for no other purpose whatever. All bonds, or other evidences of indebtedness, issued under the provisions of this act, shall show upon their face that they are issued under this act, and the purpose for which they are issued, and shall be of uniform design and style throughout the state, to be prescribed by the state auditor, whose imperative duty it shall be to devise and prepare such uniform style and draft adapted to the classes of bonds herein provided for, namely: the first class to consist of bonds of which only the interest is payable annually; the second class to consist of those of which the interest and five per centum of the principal are to be paid annually, and the third class to consist of a graduated series, the first grade made payable, principal and interest, at the end of one year from the date of issue; the second at the end of two years, and thus to the end of the series, the class to be issued being at the option of the legal voters expressed as herein provided. In any case, the new bonds, or other evidences of indebtedness, authorized to be issued by this act, shall not be for a greater sum in the aggregate, than the principal and accrued or earned interest unpaid of such outstanding bonds or other evidences of indebtedness. And when such new bonds or other evidences of indebtedness shall have been issued, in order to be placed on the market and sold to obtain proceeds with which to retire outstanding bonds, or other evidences of indebtedness, it shall be the duty of the state auditor, on the request of the corporate authorities issuing them, and at the expense of the corporation in whose behalf the issue is thus made, to negotiate the same, at not less than par value, and on the best terms which can be obtained: *Provided, always*, that any such county, city, town, township, school district or other municipal corporation issuing bonds under the provisions of this act, may, through its corporate authorities duly authorized, negotiate, sell or dispose of said bonds, or any part thereof, at not less than their par value, without the intervention of the auditor of state; *And provided further*, that no new bonds or other evidences of indebtedness shall be issued under this act, unless the same shall be first authorized, as hereinafter

provided by a vote of a majority of the legal voters of such county, city, town, township, school district or other municipal corporation voting at some general election, or special election held for that purpose.

§ 2. In all cases where any county, city, town, township, school district or other municipal corporation, shall issue any bonds or evidences of indebtedness, under this act, it shall be the duty of the county clerk of such county, or other officer to whom, or to whose office, the assessment rolls for state taxation of the property within such county, city, town, township, school district or other municipal corporation, are or shall be returnable, within five days after the total value of the property subject to taxation therein shall be returned to him, to make out and transmit to the auditor of public accounts, to be filed in his office, a certificate setting forth the total value of all taxable property of every nature and description, within such county, city, town, township, school district or other municipal corporation, as exhibited by such assessment; and it shall be the duty of the auditor of public accounts to place on the back of all new bonds, or other evidences of indebtedness issued under the provisions of this a certificate setting forth an aggregate statement of the amount of valuation of the taxable property of the municipal corporation issuing such new bonds, or other evidences of indebtedness; said certificate specifically distinguishing the value of real estate and personal property, and being based on the return provided for in this section, or, if there should be no such return made by the county clerk to the state auditor, then based on an affidavit made by the officials of the corporation issuing the bonds.

§ 3. It shall be lawful for the corporate authorities of any such municipal corporation, or officers authorized by law to call elections therein, on the petition of ten legal voters, resident therein, to submit to the voters thereof, at any general or special election, the question of issuing bonds under this act, by posting a notice in ten of the most public places therein, and by publishing the same in the nearest newspaper, twenty days before said election, which notice shall state the number and amount of bonds proposed to be issued; the kind or class thereof as specified

in the first section of the act of 1865, as hereby amended, and as also amended by the said act of 1877; the amount of each; the rate of interest, under the limitation of this amendatory act; when and where payable; for what purpose issued, and the time and place when and where said election will be held. And upon like petition and notice it shall be lawful for such corporate authorities, or officers, to submit the question of issuing bonds under this act, at a special election, which shall be held and conducted in like manner as other elections therein. The ballots shall read: "For issuing the bonds," or "Against issuing the bonds." If a majority of the votes cast be "For issuing the bonds," the same shall be issued in conformity to the specifications of said notice. Nothing contained in this act, or in the acts to which this is an amendment, shall be held to repeal, or in any wise affect the power of the City of Chicago to issue new bonds of said city conferred by an act of the General Assembly, approved February 13, 1865, amending the charter of said city, nor to in any wise affect any other law which authorizes municipal corporations to issue bonds, or other evidences of indebtedness, and which does not provide for the registration thereof.

§ 4. Upon the surrender of any bond, or other evidence of indebtedness, under this act, the same shall be endorsed canceled, and shall from time to time be destroyed, under the direction of the authority issuing the same. Upon the issuing of any new bond, or evidence of indebtedness, the clerk, or other officer having custody of the records of the fiscal matters of such county, city, town, township, school district or other municipal corporation, as the case may be, shall make registration thereof in a book to be kept in his office for that purpose, showing the date, amount, number, class, date of maturity, rate of interest and place of payment of such new bond, or other evidence of indebtedness, and the description of the bond or evidence of indebtedness for which, or for the purchasing or retiring of which, the same was given as nearly as practicable. On presentation of any such new bond, or evidence of indebtedness, issued under this act at the office of the auditor of public accounts, for registration, the said

auditor shall cause the same to be registered in this office, in a book to be kept for that purpose; such registration shall show the date, amount, number, class, date of maturity, rate of interest, time when such interest is payable, and place of payment of the principle and interest of such bond or other evidence of indebtedness, under what act, by what authority, for what purpose and by what county, city, town, township, school district, or other municipal corporation issued, and the name of the person or persons presenting the same for registration, and for such registration the auditor shall be entitled to a fee of twenty-five cents, and the auditor shall, under his seal of office, certify upon such bond the fact of such registration, for which the auditor shall be entitled to a fee of twenty-five cents, such fees to be paid by the persou or persons desiring such registration and certificate. No bonds issued under this act shall be entitled to registration in the office of the state auditor, until a sworn certificate shall have been filed with him, showing that all requirements of this act have been fully complied with, in their issue. In the case of county bonds, such affidavits shall be made by the chairman of the county board; in case of township bonds, by the supervisor of such township; in case of city bonds, by the mayor of such city; in case of town or village bonds, by the chairman of the town or village board; and in case of school district bonds, by each of the directors of such school district. Said certificate shall set forth the date of the election at which the people authorized the issuance of the bonds, and shall state the class, date, number, amount, rate of interest and date of maturity of the bonds, the aggregate equalized value of real property, and the aggregate equalized value of personal property assessed in each locality, for the previous year, together with any other information in relation thereto which may be demanded by the auditor of public accounts.

§ 5. When the bonds, or other evidences of indebtedness, of any county, city town, township, school district or other municipal corporation, shall be so registered, the auditor of public accunts shall annually ascertain the amount of principal and interest due and accrued, and to accrue, for the current year, on all such bonds and evi-

dences of indebtedness, so registered in his office, and shall, upon the basis of the certificate of the valuation of property to be transmitted to him as aforesaid, or, in case no such certificate shall be transmitted to him, or filed in his office, then upon the basis of the total valuation of the property in such county, city, town, township, school district, or other municipal corporation, for the year next preceding, estimate and determine the rate per centum, upon the valuation of such property, requisite to meet and satisfy the said interest, or interest and principal, as the case may be, together with the ordinary cost to the state of the collection and disbursement of the same, to be estimated by the auditor and state treasurer, and shall make and transmit to the county clerk of such county, or of the county in which such city, town, township, school district, or other municipal corporation is situated, or to the officer or authority whose duty it is, or may be, to prepare the estimates and books for the collection of state taxes in such county, city, town, township, school district, or other municipal corporation, a certificate setting forth such estimated requisite per centum for such purposes, to be filed in his office; and the said per centum shall thereupon be deemed added to and a part of the per centum which is or may be levied, or provided by law, for the purposes of state revenue, and shall be so treated by such clerk, officer or authority in making such estimates and books for the collection of state taxes; and the said taxes shall be collected with the state taxes, and all laws relating to the state revenue shall apply thereto, except as herein otherwise provided: *Provided*, that it shall be lawful for the county collector at any time before settlement with the state treasurer, to pay, from such taxes, any coupons that are due for interest that may be presented for payment, and to pay from any surplus, not required for interest purposes, the principal of any such bond that may be presented for payment, whether due or not, and in settlement with the state treasurer the county collector shall be credited with such paid coupons and bonds the same as money.

161 U.S. 357

Supreme Court of the United States

OCTOBER TERM, 1895.

No. [illegible]

LUTHER R. GRAVES, [illegible] SOCIETY FOR SAVINGS AND WILLIAM BURROUGHS, Appellants,

vs.

COUNTY OF SALINE, Appellee.

ON A CERTIFICATE FROM THE [illegible] COURT OF APPEALS, FOR THE [illegible] CIRCUIT.

BRIEF ON BEHALF OF APPELLEE.

SAMUEL W. WHEELER,
Attorney for Appellee.

W. H. BOYER,
Of Counsel.

dences of indebtedness, so registered in his office, and shall, upon the basis of the certificate of the valuation of property to be transmitted to him as aforesaid, or, in case no such certificate shall be transmitted to him, or filed in his office, then upon the basis of the total valuation of the property in such county, city, town, township, school district, or other municipal corporation, for the year next preceding, estimate and determine the rate per centum, upon the valuation of such property, requisite to meet and satisfy the said interest, or interest and principal, as the case may be, together with the ordinary cost to the state of the collection and disbursement of the same, to be estimated by the auditor and state treasurer, and shall make and transmit to the county clerk of such county, or of the county in which such city, town, township, school district, or other municipal corporation is situated, or to the officer or authority whose duty it is, or may be, to prepare the estimates and books for the collection of state taxes in such county, city, town, township, school district, or other municipal corporation, a certificate setting forth such estimated requisite per centum for such purposes, to be filed in his office; and the said per centum shall thereupon be deemed added to and a part of the per centum which is or may be levied, or provided by law, for the purposes of state revenue, and shall be so treated by such clerk, officer or authority in making such estimates and books for the collection of state taxes; and the said taxes shall be collected with the state taxes, and all laws relating to the state revenue shall apply thereto, except as herein otherwise provided: *Provided*, that it shall be lawful for the county collector at any time before settlement with the state treasurer, to pay, from such taxes, any coupons that are due for interest that may be presented for payment, and to pay from any surplus, not required for interest purposes, the principal of any such bond that may be presented for payment, whether due or not, and in settlement with the state treasurer the county collector shall be credited with such paid coupons and bonds the same as money.

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JAMES H. McKENNEY,
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Supreme Court of the United States,

OCTOBER TERM, 1895.

No. 510.

LUTHER R. GRAVES, D. B. WESSON, SOCIETY FOR SAVINGS AND WILLIAM BURGOYNE, APPELLANTS,

vs.

COUNTY OF SALINE, APPELLEE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

BRIEF ON BEHALF OF APPELLEE.

SAMUEL P. WHEELER,
Attorney for Appellee.

W. H. BOYER,
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Supreme Court of the United States,

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No. 510.

LUTHER R. GRAVES, D. B. WESSON, SOCIETY FOR SAVINGS AND WILLIAM BURGOYNE, APPELLANTS,

vs.

COUNTY OF SALINE, APPELLEE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

Three questions have been certified by the United States Court of Appeals, and of these in their order.

I.

"IS THE COUNTY OF SALINE ESTOPPED BY THE RECITAL IN THE FUNDING BONDS TO ASSERT THAT THE BONDS ISSUED TO THE ST. LOUIS & SOUTH-EASTERN RAILWAY COMPANY AND TO THE BELLE-VILLE & ELDORADO COMPANIES RESPECTIVELY, AND FOR WHICH THE FUNDING BONDS WERE EX-CHANGED WERE NOT BINDING SUBSISTING LEGAL OBLIGATIONS OF SAID COUNTY?"

The statement of facts discloses the following in brief: that the County of Saline in the year 1872 issued railroad aid bonds, amounting to $25,000, to the St. Louis & Southeastern Railway Company, and in 1877 issued like bonds amounting to $75,000, to the Belleville & Eldorado Railroad Company in payment for subscriptions to the capital stock of said companies. In 1885 funding bonds were issued by Saline County amounting to $100,000, and exchanged for the bonds previously issued, the holders of the original bonds taking the new or funding bonds in exchange. The funding bonds contained a statement or recital, as follows:

"This bond is one of a series of 195 of like tenor, issued for the purpose of funding and retiring certain binding subsisting legal obligations of said county, which remain outstanding and unpaid, under the provisions of an act of the General Assembly of the State of Illinois, entitled 'An act to enable counties, cities, towns, townships, school districts and other municipal corporations to fund, retire and purchase their outstanding bonds and other evidences of indebtedness, and provide for the registration of new bonds, or other evidences of indebtedness, in the office of the Auditor of Public Accounts,' approved February 13th, 1865, and acts amendatory thereto, approved April 27th, 1877, and June 4th, 1879, and in pursuance of a vote of the majority of the legal voters of said county voting at an election legally called, under said act the 6th of November, 1883.

"We hereby certify that all requirements of said acts have been fully complied with in the issue hereof."

The section of the act of the General Assembly of Illinois, authorizing the funding of debts, which are the binding subsisting legal obligations of counties, etc., is set out in full in the statement, and will be found on page 3 of the transcript.

These bonds were afterwards registered in the office of the Auditor of Public Accounts of the State of Illinois, and interest paid thereon until 1890.

It also appears from the statement of facts, that on July 2, 1870, a provision of the constitution of Illinois became effective, which is as follows:

"No county, city, town, township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation; provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized under existing laws by a vote of the people of such municipalities, prior to such adoption."

It is not material to this inquiry whether the original bonds were valid or invalid, but is the county estopped to assert that the original bonds were not binding subsisting legal obligations of the county, by reason of the recitals in the funding bonds, and in view of the facts stated?

The recital found in the funding bonds amounts to no more than a statement that the provisions of the act of the General Assembly of Illinois (page 3 of transcript) respecting the funding of municipal indebtedness had been complied with.

The power to issue bonds of this character is confined to cases where binding and subsisting legal obligations exist.

The act provides, "that in all cases where any county * * * * has issued bonds * * * * * * * which are the binding and subsisting legal obligations of such county * * * * * * * and the same remain outstanding and unpaid it shall be lawful for the proper corporate authorities of such county * * * * * * upon the surrender of any such bonds * * * * * * to issue in lieu or place thereof to the owners or holders of the same new bonds." It will be observed the General Assembly of Illinois gave notice to the commercial world, that bonds thus issued, must be for the purpose of exchange for the binding subsisting legal obligations of the county.

It would seem that we are brought face to face with the proposition, does the issue of funding bonds, and the exchange thereof for bonds previously issued, estop the county to deny the validity of the first issue.

If an estoppel is thus affected, it must be placed on some legal ground, and the only one suggested is, that the issue of the funding or new bond is a ratification of the old or first issue.

It will be observed from the statement of facts, that the defence to the original bond is, that they were issued without authority—that the county authorities had no power to issue them. The defense is not based upon any irregularity, but the contention is, they were issued without power, and are void in the hands of any and every one.

The contention therefore must be that a void act was ratified. But let us suppose the act was of such a character as that it might be ratified.

It is familiar learning, that in order to ratify, the party must, at the time of ratification, be capable of making the original contract.

Marsh v. *Fulton County*, 10 Wallace 676.
Morton v. *Shelby County*, 118 U. S. 426.

In the case last cited the court say:

"By this provision of the constitution the County Court * * * was shorn of any power to order a subscription to take stock in any railroad company without the previous assent * * * * of the voters of the county * * * * * and of course it could not afterwards, without such assent, give validity to a subscription previously made * * * * * It could not ratify the act of an unauthorized body. To ratify is to give validity to the act of another, and implies that the person or body ratifying, has at that time power to do the act

ratified. As we said Marsh v. Fulton County, where it was contended, as in this case, that certain bonds of that county, issued without power, were ratified by various acts of its supervisors, a ratification is in its effect upon the acts of an agent, equivalent to the possession by him of a previous authority. It operates upon the act ratified in the same manner as though the authority of the agent to do the act existed originally.

"It follows that a ratification can only be made when the party ratifying possesses the power to perform the act ratified. The supervisors possessed no authority to make the subscription or issue the bonds in the first instance. * * * * * * The supervisors in that particular were the mere agents of the county. They could not, therefore, ratify a subscription without the vote of the county, because they could not make a subscription in the first instance without such authorization. It would be absurd to say that they could, without such vote, by simple expression of approval, or in some other indirect way, give validity to acts when they were directly in terms prohibited by statute from doing those acts until after such vote was had. That would be equivalent to saying that an agent, not having the power to do a particular act for his principal, could give validity to such act by its indirect recognition."

In Davis County v. Dickinson 117 U. S. 657 it is said: "Nor can the payment of interest on all the bonds have the effect of ratifying bonds issued beyond the lawful limit; for a ratification

can have no greater force than a previous authority, and the county cannot ratify what it could not have authorized. The necessary consequence is that the court below erred in instructing the jury that the plaintiff was entitled to recover, etc."

The funding bonds here involved were issued on the 1st day of July, 1885.

On the 2nd of July, 1870, the provision of the constitution of Illinois became effective, which is as follows:

"No county, city, town, township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donations to or loan its credit in aid of such corporation, etc."

In 1885, when the funding bonds were issued, the county was shorn of any power to become a subscriber to the capital stock of any railroad or private corporation, or to loan its credit in aid of such corporation. It could not, under any circumstances, do as it had done in issuing the original bonds in payment for a subscription to the two railroad companies.

It could not therefore ratify the former acts, for the palpable reason that it did not possess the power to perform the act ratified.

The county being without any power to ratify the former act, for the reason the constitutional provision had taken it away, it necessarily follows, that the agents of the county, in

issuing the bonds, could not embody therein any statement or recital, the effect of which would be to estop the county to set up any defense to the bonds given in exchange for the new or funding bonds.

The foregoing provision of the constitution has been so frequently interpreted and applied by this court, as well as the court of last resort in Illinois that it is unnecessary to cite the cases.

The act of the General Assembly of Illinois, authorizes the issue of funding bonds for one purpose only, and that to issue in exchange to the holders or owners of binding subsisting legal obligations of the county.

If bonds are issued for any other purpose, or to give the same in exchange for obligations that are not binding subsisting legal obligations, the act is without power. It was not within the province or power of the county or its agents to ratify the former acts done with respect to the original subscription and issue of bonds, neither was it within their power to estop the county by any statement or recital in the funding bonds. The contention is, that the county authorities acted without power in issuing funding bonds, for the reason that the bonds sought to be exchanged were not binding subsisting legal obligations of the county.

On the other theory, the county might make a subscription to the capital stock of a railroad company and issue bonds

in payment thereon in 1895, and in direct violation of the constitutional provision, and a year later fund the bonds thus issued, and by recitals similar to those found in the bonds under consideration, estop the county to deny the first illegal act, thus rendering nugatory the wholesome provision of the Constitution of Illinois, designed to prevent the prodigal loaning of municipal credit to private corporations.

It is the uniform doctrine, that recitals in bonds of this character issued without power, cannot estop the county from setting up their invalidity.

Hedges v. *Dixon County*, 150 U. S. 182 and cases cited.

The funding bonds now in the hands of the parties to this suit were received by them in exchange for the first issue, alleged to have been issued without power, and therefore void.

They paid no new consideration for the funding bonds, and in point of fact their position is no better than it was with the old, and this, I submit is an important factor in determining the application of the doctrine of estoppel.

Much is said by way of argument to the effect that the people of the county, and the county officials were the best judges as to what constituted the legal binding obligations of the county, and as to the statements by text writers, that a purchaser of funding bonds may rely on the findings of the municipality touching the validity of the original indebtedness.

This all rests upon the theory that the municipality, by the act of funding its indebtedness, ratifies the previous act, and thus an estoppel is created to deny the validity of the original debt.

It will be observed the act of the General Assembly of Illinois was first in force February 13, 1865, and more than five years before the constitutional provision referred to became operative. It must now be construed in the light of the constitutional provision of July 2, 1870, and when so construed and applied, we find the reason for the rule contended for, is gone and with it the rule itself. As I have undertaken to show, there could have been no ratification.

II.

The second question submitted is as follows:

"ARE THE FUNDING BONDS SO ISSUED BY THE COUNTY OF SALINE LEGAL, VALID AND BINDING OBLIGATIONS UPON SAID COUNTY, IN THE HANDS OF A *BONA FIDE* HOLDER FOR VALUE BEFORE MATURITY?"

If the original bonds given in exchange for the funding bonds were void, I submit the answer should be in the negative.

In view of the provision of the constitution, the power was not lodged with the people of the county, nor with its officers to make good and valid, railroad aid bonds that were void.

In Cooley on Constitutional Limitations, 3rd Edition, Chapter 3, Section, 28, it is said:

"By the constitution which the people establish, they not only tie up the hands of their official agencies, but their own hands as well, and neither the officers of a State, nor the whole people as an aggregate body are at liberty to take action in opposition to this fundamental law."

It must be conceded from the statement of facts, that the major part of the original bonds were void—not voidable, or irregularly issued, but absolutely void. The county issued them without power so to do, in payment for a subscription to worthless stock in two railroad companies.

The county attempted to loan its credit to a private corporation, but failed of its purpose. Five years after the adoption of the constitutional provision, prohibiting the county from loaning its credit to a private corporation, the county as it is insisted, performed an act, the effect of which was to do what it had not previously done, viz: loan its credit to two private corporations. How is this possible in view of the constitutional provision? The people established the constitution, and as Mr. Cooley says, "they not only tied up the hands of their official agencies, but their own hands as well."

To permit the county, in any way, to lend its credit to a private corporation since July 2, 1870, although every voter in the county might sanction it at the polls, would be a clear vio-

lation of the constitution, and to permit any evasion of its provisions, is violative of its spirit.

The case Jasper County v. Ballou, 103 U. S. 745, is relied on by counsel for appellants, and will be found to differ from the case under consideration in all its essential features. The bonds originally issued were not void, but irregularly issued.

In the opinion it is said, "whether these bonds were valid was * * * * * an open question, and certainly not free from doubt," and again "their offer having been accepted, they are now estopped from insisting upon an irregularity which they had by their votes waived, etc."

Indeed the real question seems to have been whether the county should be estopped from insisting upon a simple irregularity in the issue of the original bonds.

But the most important question in connection with the Jasper County case is, that the constitutional provisions of July 2, 1870, is not referred to nor does it appear that the attention of the court was drawn to it. This may be accounted for by the fact that the original bonds were not considered void. The holding of the court is, that the people of Jasper County "voluntarily waived an irregularity." Here we have to deal with an entirely different question. An act was done without power and the action necessarily void. Could the people of the county, in view of the prohibition of the constitution of Illi-

nois, waive the right to insist upon the binding force of such an act, even by a unanimous vote?

Two cases decided by the U S. Circuit Court of Appeals for the Sixth Circuit have been cited by counsel for appellants. They are

Cadillac v. *Woonsocket Ins., &c.*, 58 Fed. Reporter 935.
Ashley v. *Board, Etc., Presque Isle Co.*, 60 Fed. Reporter 55.

These are both Michigan cases, and the validity of funding bonds was drawn in question. The defence to the original bonds was, that they had been misapplied, or applied to a use not contemplated by the authority given for their issue Had the bonds originally issued been void, the cases would not be in point, for it does not appear there existed in Michigan any provision of the constitution or of the law prohibiting municipalities from ratifying previous acts done, or from doing the original act, and this may be said of all authorities cited by counsel for appellants.

The bonds in controversy show on their face they are funding bonds. The parties who took them knew they were issued to take the place of railroad aid bonds. They were bound to know the original bonds were void. They were likewise bound to know that the county was prohibited by the law from funding other than legal subsisting obligations, and moreover that the county was prohibited by the constitution to ratify the old

bonds. How then can it be claimed they relied on any recital in the bond, or were misled thereby?

As was said by this court in the case of Lewis v. Shreveport 108 U. S. 282; "Every purchaser of such a bond is chargeable in law with notice of the want of power in the municipal authority to bind the body politic in that way.

This principle is elementary. * * * * * It is a matter of no importance that the city employed agents to sell the bonds, or that its law officer gave an opinion in favor of their validity, or that they have been recognized in official statements as binding obligations, or that taxes have been levied to pay either principal or interest. Corporate ratification without authority cannot make a municipal bond valid when issued for want of power to make it."

To the same effect.

Cooley on Constitutional Limitations, Sections 196 and 215, Chapter 8.

III.

The brief of counsel for appellants presents a general and quite satisfactory answer to the third question. Counsel say: "It is addressed solely to the conscience of the court for their determination of what would be an equitable decree under certain circumstances."

If the court should be of opinion the original bonds issued to the St. Louis & Southeastern Railway Company should be paid, an inquiry can be directed by the court as to who were the holders of this class of bonds at the time the exchange was made, and require payment thereof; or it may be ascertained under the direction of the court, the particular numbers the funding bonds exchanged for St. Louis & Southeastern bonds bear, and such might be decreed valid. A court of equity will not fail to completely execute its power, where the facts necessary to enable it to do so are ascertainable, no matter how difficult it may be to arrive at the truth.

In the case of Daviss County v. Dickinson, 117 U. S. 657, the court separated the valid bonds from the invalid by reference to the numbers, and in Hedges v. Dixon County, 150 U. S. 182, the court in commenting on the case of Daviss County v. Dickinson, supra, say: "In that case under authority conferred by statute, the county voted a subscription of $250,000, to a railroad company, which was made, and, by order of the County Court, bonds of the county to that amount were ordered to be sold and disposed of by a committee for the purpose of paying such subscription. The officers of the county, without authority, executed and issued bonds in the amount of $300,000. The bonds as they were delivered, were separately numbered and entered upon the county register. The court held that the power to issue bonds was limited to $250,000, and that the bonds issued in excess of that amount were unlawful and void.

It was further held that the bonds to the amount authorized, which were first issued and delivered, were valid, and entitled to payment. In that case there was a clear and well defined line between the legal and illegal issues, which enabled the court to declare invalid such of the bonds as exceeded the amount authorized, and to hold that the illegal excess did not vitiate the bonds which were authorized and legally issued. There was no scaling of the entire issue in that case so as to bring it within the limits of the county's authority."

So here, the good can be identified and separated from the bad, should such a course be found necessary. It is suggested by another of the counsel for appellants, in a separate brief, that the St. Louis & Southeastern bonds should be paid, and divided *pro rata* among the holders of the whole $100,000 funding bonds. This might be done by consent of all holders of the funding bonds, or possibly as a last resort, but not if the good bonds can be identified, as they surely can be. Such a plan would naturally be favored by the holders of bonds taken in exchange for the void ones The holders of bonds taken in exchange for valid bonds, if there were any such, ought not to suffer by reason of bad associations.

SAMUEL P. WHEELER,
Attorney for Appellee.

W. H. BOYER,
Of Counsel.

In the United States Supreme Court.

October Term A. D. 1894.

LUTHER R. GRAVES, D. B. WESSON, SOCIETY FOR SAVINGS AND WILLIAM BURGOYNE,
Appellants,
vs.
SALINE COUNTY.

No. ~~886~~ 510

MOTION TO ADVANCE CAUSE.

And now comes the said plaintiff in error, Luther R. Graves, by George A. Sanders, his attorney, and moves the Court to advance said cause for the following reasons:

I.

This cause comes before this Court on a certificate from the United States Circuit Court of Appeals of the Seventh Circuit, wherein three questions are submitted to this Court.

II.

The progress of this cause has been stayed, and no further action can be taken until the Circuit Court of Appeals receives the directions of this Court.

III.

The case presented involves questions of great importance, concerning which there exists an apparent uncertainty, and there are many other cases depending upon the decision of